

INCOME TAX

TWELFTH EDITION.

**MOTILAL BANARSIDASS
DELHI :: VARANASI :: PATNA**

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PREFACE TO THE TWELFTH EDITION.

The cordial reception given to the eleventh edition has confirmed me in the belief that this work fulfils its aim of being a sound and practical guide for students, and one which can readily be understood. I have taken the opportunity to recast certain sections, bring the work up to date in law and practice, and to incorporate appendices containing notes on Irish Free State Tax, Corporation Duty, etc., which readers will find useful on appropriate occasions.

References are given throughout the text to the appropriate sections of the Income Tax Act, 1918, and subsequent Finance Acts, including that of 1933. The practice of legislating by cross-reference, and the continuous amendments in the Law, render it essential for every practitioner to have at his elbow a copy of the Official Publication, "The Income Tax Acts," and it is impracticable within the limits of a text-book of this description to reproduce the Acts in a form so complete in its cross-references as that Publication. Wherever necessary, the text of the Acts has been incorporated in the body of the book.

No attempt has been made to quote every decided case, as, without a full exposition of the exact facts, a bald statement of the judgment is frequently useless or even misleading. The leading cases have been included in their appropriate setting. Readers requiring to refer to other cases will turn automatically to Dowell's "Income Tax Laws" and/or Harrison's "Index to the Tax Cases," and thence to the Reports.

I take this opportunity again to thank Mr. A. E. LANGTON, LL.B. (Hons.), for his valuable assistance and constructive suggestions.

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ABBREVIATIONS USED IN REFERENCE TO CASES CITED.

ABBREVIATION.	REPORTS.
A C.	} Law Reports, Appeal Cases.
App. Cas.	
A T.C.	Annotated Tax Cases.
C.D.	} Law Reports, Chancery Division
Ch	
Curt.	Curtis' Ecclesiastical Reports, 1834-44
Ex D.	Law Reports, Exchequer Division.
F.	Fraser (Court of Session Cases, 5th Series).
J P	Justice of the Peace.
K B.	Law Reports, King's Bench Division
L J.K B.	Law Journal Reports, King's Bench Division.
L R., E. and I. App.	Law Reports, English and Irish Appeal Cases— House of Lords.
L T.	Law Times Reports.
Q B.	} Law Reports, Queen's Bench Division.
Q B.D.	
S C.	Scottish Session Cases
Sc. L R.	} Scottish Law Reporter.
S.L R.	
S.J.	Solicitors' Journal.
T C	Official Reports of Tax Cases for the Commissioners of Inland Revenue
T.L R.	Times Law Reports.
Ves.	Vesey.
W N.	Weekly Notes.
OTHER ABBREVIATIONS.	
C.A.	Court of Appeal.
H.L.	House of Lords.

All section references are to the Income Tax Act, 1918, unless otherwise stated, *e.g.*, § 30—1933, means Section 30, Finance Act, 1933.

THE MACHINERY OF INCOME TAX.

CHAPTER I.

The Machinery of Income Tax.

§ 1.—THE EVOLUTION OF INCOME TAX

2 —(a) THE PRINCIPLES OF ASSESSMENT

(b) PROVISIONS FOR CONTINUITY

3 —BOARD OF INLAND REVENUE.

4.—INCOME TAX OFFICIALS.

(a) General or District Commissioners.

(b) Additional Commissioners.

(c) Assessors and Collectors.

(d) Clerk to the General Commissioners

(e) H M. Inspector of Taxes.

(f) Special Commissioners

(g) Board of Referees.

CHAPTER I.

THE MACHINERY OF INCOME TAX.

§ 1.—The Evolution of Income Tax.

Income Tax was originally introduced as a War Tax in the year 1798, by Mr. Pitt, and in the following year a 10 per cent. duty was imposed on all incomes, although reduced rates were charged on incomes ranging between £60 and £200 per annum. Incomes below £60 were exempt from all taxation. (Taxation at the source was not introduced until the year 1803, and in consequence under the 1799 Act the taxpayer was required to give a return of his income from every source. The immediate effect of taxing income at the source was to increase very largely the revenue derived from the tax, and although the rate was reduced to less than half what it was previously, the revenue derived from the tax showed no appreciable decline.

In the year 1816 the tax was entirely withdrawn, and was not re-imposed until the year 1842, when an Act was introduced by Sir Robert Peel, formulating a code which to a large extent still remains in force, having been re-enacted as a part of the Act of 1918. It was not, however, until the passing of the Finance Act, 1907, that the Income Tax came to be recognised officially as a permanent source of national revenue rather than a temporary tax.

This Act also, for the first time, introduced the principle of differentiating between earned and unearned income. The Finance (1909-10) Act, 1910, extended this principle, and also introduced the principle of the super-tax. (The Finance Acts of 1926 and 1927 changed the bases of assessment of profits derived from sources other than the property in or occupation of lands, simplified the making of returns of total income and substituted sur-tax for super-tax. The Act of 1928 extended the new bases of assessment to cover income from employments, etc.)

§ 2.—(a) The Principles of Assessment.

The importance of the Income Tax to the Government of the country is evidenced by the fact that in the fiscal year 1932-33 the Income Tax proper produced £251,539,000 and the sur-tax £60,650,000.

It must be conceded that a just comprehension of the administration relating to this tax is of vital importance to the taxpayer since it is a direct tax (although much of it is collected indirectly owing to the rules for deduction at source), and as such its incidence is more noticeably onerous than in the case of indirect taxation. It is also in a measure arbitrarily assessed, since in many cases a statutory income rather than an actual income is the basis of assessment. Finally, the assessment and collection of the tax is founded on a long series of Acts of Parliament the principal of which was passed in the year 1842. The consolidation of these Acts up to the year 1918 received Parliamentary sanction in the Income Tax Act, 1918, which is the principal Act relating to Income Tax as from the 6th April, 1919.

In consequence of the directness of the tax, the taxpayer wants to feel that it is fairly charged upon him, and that the incidence of the whole tax is fairly distributed upon the general body of the taxpayers. The assessment on the basis of statutory income instead of actual income often prevents the uninformed taxpayer from realising its fairness, and the mass of legislation, to which he must refer if his impressions are to be corrected, does not enable him to obtain a rapid comprehension of the Income Tax machinery.

The Income Tax legislation of this country, while not without its defects and anomalies, forms an excellent code, many features of which call for admiration. The rate of the tax is suggested by the Government according to its financial requirements; and variations of the code are also suggested by them according to the experience gained from time to time by the officials, or to introduce innovations which are considered desirable. These rates or variations must, however, receive the sanction of the legislature before they can be enforced, so that annual Parliamentary sanction is necessary before taxation can be collected.

The Government, having obtained this sanction, are consequently in a position to collect revenue, but the assessment of the taxpayer is in no way within the discretion of the Government. Between the Government and the taxpayer stand the Commissioners, and it is by them that the assessments are determined. The Government are not without representation, but the Commissioners hold the scales of justice between the representatives of the Government on the one hand and the taxpayer on the other.

If either the Government or the taxpayer is dissatisfied with the final decision of the Commissioners, the aggrieved party must, where appeal is allowed by the Statutes, seek a remedy in the King's Courts.

(b) Provisions for Continuity.

Income Tax is not in theory a permanent tax, but is a yearly tax only, imposed by the Finance Act of the year. The Income Tax Act, 1918, as amended by subsequent Finance Acts, regulates the impost when it has been recreated by the annual Finance Act. Section 1 (1918) reads as follows :

“Where any Act enacts that Income Tax shall be charged for any year at any rate, the tax at that rate shall be charged for that year in respect of all property, profits, or gains respectively described or comprised in the Schedules marked A, B, C, D, and E, contained in the First Schedule to this Act and in accordance with the rules respectively applicable to those Schedules.”

Each Finance Act imposes the tax for the year to the 5th April following, when the tax would automatically cease were it not for § 210 (1918), and the Provisional Collection of Taxes Act, 1913. The latter Act gives statutory effect for a limited period to resolutions of the Legislature varying or renewing taxation, and thus avoids the chaos which would otherwise arise between the 5th April and the date of passing the Finance Act for the ensuing year.

As soon as is practicable after the commencement of the fiscal year, *i.e.*, 6th April, the Chancellor of the Exchequer introduces into the House of Commons his Budget of Income and Expenditure for the ensuing year, and recommends the rate of tax to be imposed for that year. The Committee of Ways and Means of the House of Commons (so long as it is a Committee

of the whole House) may then (and does) pass a resolution providing for the renewal for a further period of the tax in force or imposed during the previous year, either at the same or a different rate, and either with or without modifications. This resolution contains a declaration that it is expedient in the public interest that the resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act, 1913, which Act gives the resolution statutory effect, and keeps in force all enactments with reference to the tax as last imposed by Act of Parliament, subject to the provisions that:—

- (a) The resolution ceases to have effect if it is not agreed to, with or without modification, by the House within the next ten days on which the House sits after the resolution is passed by the Committee, and also if a Finance Bill varying or renewing the tax is not read a second time by the House within the next twenty days on which the House sits after the resolution is so agreed to; and
- (b) The resolution ceases to have statutory effect if Parliament is dissolved or prorogued, or an Act comes into operation varying or renewing the tax, or the resolution is rejected by the House.

If the resolution were to cease to have statutory effect under the above provisions, any money paid, either directly or by deduction, would have to be made good; but if the tax reimposed by the resolution is modified by the House or the Finance Act, all payments and deductions of tax are required to be

adjusted by reference to the modified rate. (The resolution has effect for four months; a period which gives to Parliament the requisite time in which to discuss the Finance Bill and pass it into law) (§ 1, P.C.T. Act, 1913).

Section 2 of that Act legalises payments and deductions of tax for the month to 5th May, in accordance with the law of the year which expired on the 5th April, subject to the passing of the above resolution within that month. Any necessary adjustments arising out of a change in the rate of tax must be made when the new rate becomes law.

Section 210 (1918) provides that as soon as the tax is granted for any year, the provisions of Acts in force as to tax for the year ended 5th April prior to the resolution shall apply to the year for which the tax is so granted.

The chain is completed by a provision in each Finance Act that all such enactments as had effect with respect to the Income Tax for the year ended 5th April prior to that Finance Act being passed shall have effect with respect to the Income Tax charged for the year for which the Finance Act operates.

The procedure may seem complicated, but the only alternative would be a permanent tax which might be brought up for amendment at any time; as it is, it comes up annually, thus ensuring that Parliament shall review it. Although such reviewing may not always meet with unanimous approval, it does at least allow the Legislature to remedy bad defects and close loopholes soon after they are revealed.

Occasionally, as happened in 1931, a second Finance Act is passed amending the rate for the year. The

new rate so fixed operates for the whole year, any tax already paid by deduction at source being adjusted, as will be seen hereafter.

§ 3.—Board of Inland Revenue.

The general control of the Income Tax is vested in the Commissioners of Inland Revenue who together, or any two of whom, constitute the Board of Inland Revenue.)

The chief offices of the Board are in London at Somerset House; any communications to the Board must be addressed to the Secretary at that address.

The Commissioners of Inland Revenue are appointed by His Majesty, and are subject to the authority, control and direction of the Treasury (The Inland Revenue Regulation Act, 1890).

They have power to appoint officers for collecting, receiving, managing and accounting for Inland Revenue where such officers are not required by law to be appointed by some other authority (*ibid.*, and § 57—1918). It is to the Board that the Chancellor of the Exchequer and the Financial Secretary to the Treasury look for advice on all matters regarding the introduction of amendments of Income Tax law, estimates, etc.

§ 4.—Income Tax Officials.

As a considerable amount of confusion appears to exist as to the functions of the various officials appointed to put into execution the Income Tax Acts, it has been thought that a short summary of the machinery employed might be found of advantage for the proper understanding of Income Tax procedure.

(a) General or District Commissioners.

General or District Commissioners, 'who receive no remuneration for their services', were, in 1842, appointed from the Land Tax Commissioners, vacancies in the body being filled up from time to time from a list of persons eligible for the appointment (§ 59—1918). Certain property qualifications are required. In the City of London, the Aldermen and Corporation, the Bank of England, and some other public bodies are allowed to select Commissioners, and in certain other 'cities and towns the magistrates' and justices' may also select a number of Commissioners (§ 59 and 2nd Schedule—1918). The number of General Commissioners in any division must not be less than three nor more than seven, but the Commissioners of Inland Revenue may authorise an increase not exceeding fourteen. The General Commissioners may co-opt or appoint additional General Commissioners for expediting the assessment of weekly wage-earners assessed half-yearly (§ 59—1918). The principal functions of the General Commissioners are : (1) To appoint a clerk (§ 66) (usually a solicitor or an accountant) who is under their control but paid by the Treasury ; (2) To appoint assessors (§ 76) whom they are to instruct and assist (§ 111—1918) ; and, in the City of London and in courts, public departments, and Houses of Parliament, and in the offices of paymasters of civil services, to appoint collectors (§ 37—1931) ; (3) To appoint Additional Commissioners, or, in default, to act as such themselves (§ 62) ; and to consider cases referred to them by the Additional Commissioners (§ 121) ; (4) To allow the Income Tax assessments and hear appeals (§§ 120, 121, 122, 125, 126, 133, *et seq.*) ; (5) To administer

the prescribed oaths to assessors and collectors (§§ 108 (3), 172 (2 b), 173, 175, etc.) and receive the prescribed declarations of secrecy to be made by Commissioners, clerks, assessors, collectors, Inspectors and their assistants (§ 62 (2)); (6) To impose penalties in certain cases (§§ 107, 132).

On appeal the decision of the General Commissioners on a point of fact is final; but persons aggrieved by decisions on certain questions relating to residence or domicile may appeal to the Special Commissioners (§ 27—1924).

(b) Additional Commissioners.

Where they deem it expedient the General Commissioners may appoint fit and proper persons to act as Additional Commissioners. Where no Additional Commissioners are so appointed, the General Commissioners perform their duties (§ 61—1918). Not less than two, nor more than seven Additional Commissioners can act at any meeting (§ 62—1918). They have, presumably, special knowledge of the different classes of trades and callings in the locality, and their functions relate solely to the making of assessments under Schedule D (§ 121—1918). They are supposed to examine the assessors' books, listen to any explanation made by the Inspector of Taxes, who represents the Crown, and then fix the amount of the assessment, which must then be signed by the Additional Commissioners and delivered to the General Commissioners. Notice of the assessment is served on the person assessed on the expiration of 14 days after the Inspector has had notice of the delivery of the assessments to the General Commissioners. The assessments are allowed and confirmed by the General Commissioners after the

time for hearing appeals against such assessments has expired (§ 122—1918). Additional Commissioners sometimes work in committees (§ 62—1918).

(c) Assessors and Collectors.

Assessors are officials appointed by the General Commissioners from among the inhabitants of each parish (§ 76—1918). Where none is appointed, the Inspector may act until the office is filled. (Within the Administrative County of London, the Inspectors are the assessors for Schedules A and B (§ 77—1918). Assessors are paid by the Treasury (§ 78—1918). Persons appointed assessors must act as such (§ 79—1918). Prior to 6th April, 1928, it was their duty to issue all notices required under the Income Tax Acts (§ 76—1918). (In the early part of every financial year they had to prepare a list of all persons who were probably liable to assessment under Schedule D, and issue to each such person the familiar Form of Return, which is required to be completed and sent back within 21 days. The duty of issuing "particular notices," i.e., the Return Forms, except notices for returns of annual value for the purposes of assessment under Schedules A and B, has been transferred to the Inspector of Taxes as from 6th April, 1928 (§ 43—1927), but the assessor has still to hand to the Inspector a list of the persons who he thinks should be served with notices (§ 108—1918; § 46—1927). The assessors are responsible for affixing to the doors of churches, etc., the general notices requiring all persons liable to do so to make returns of their income (§ 98—1918). In cases where no return has been made, the assessor inserts an estimate of the assessable income (§ 112—1918). The lists are then delivered to the Commissioners (§ 113—1918).

The assessments under Schedules A and B, for years of revaluation, and under Schedule E in all years, are made by the assessors, and delivered to the Commissioners who must hand them to the Inspector for examination (§ 113—1918). In other years, the Inspector makes the assessments under Schedule A and B (§ 77—1918). The assessments are not legally binding, however, until they are allowed by the General Commissioners (§ 120—1918).

Collectors are appointed in England by the Commissioners of Inland Revenue except in the cases stated in Chap. I, § 4 (*a*) (§ 37—1931), in Scotland by the Treasury (§ 85). They are remunerated by the Treasury.

(d) Clerk to the General Commissioners.

The clerk to the General Commissioners is a paid official appointed by them to act as their clerk and also as clerk to the Additional Commissioners. On receipt of the assessment lists, the particulars from the returns are entered into books by the clerk and his staff, and after the assessments have been made by the Commissioners, the assessment notices are sent by him to the taxpayers. In the case of an appeal to the General Commissioners, he gives the taxpayers information regarding the meeting of the Commissioners for the hearing of appeals, and acts at the appeal in an advisory capacity.

(e) H.M. Inspector of Taxes.

(The Inspector of Taxes is a paid official of the Board of Inland Revenue appointed by the Treasury (§ 75—1918). He now issues the return forms under Schedules D and E, examines returns and the assessments made

by the Assessors after delivery to the Commissioners and before the assessments are made by the latter; and has power to supply omissions, amend assessments and make sur-charges, and certify them to the Commissioners.

All notices of appeals against assessments have to be sent to him. In most cases it is possible to agree the figure of assessment with the Inspector upon presenting proper accounts. In the event of an appeal to either the General or Special Commissioners, the Inspector attends on behalf of the Inland Revenue Authorities. Appeals to the High Court are conducted by the Solicitor to the Board of Inland Revenue in the Inspector's name.

The Inspector can, under § 125, cause additional assessments to be made, and in the case of a person who has escaped assessment altogether in any year, the Inspector of Taxes has power, under § 126, to make a supplementary charge, and certify it to the General Commissioners, at any time within six years after the expiration of the year for which the person ought to have been charged.

(f) Special Commissioners.

Special Commissioners are the Commissioners of Inland Revenue and such other persons as are appointed by the Treasury (§ 67—1918). They are entitled to such salary and expenses as the Treasury direct. They make assessments under Schedule D, including mines, quarries, etc. (which prior to 1927-28 were assessed under No. III, Schedule A), in cases where the taxpayer has elected to be assessed by them. They hear appeals against assessments under Schedules D and E allowed by the General Commissioners where

the taxpayer elects for the appeal to be heard by the Special instead of by the General Commissioners (§ 148 and § 19—1922), and also against their own assessments. The taxpayer or the Inspector may call upon the Special Commissioners to state a case on a point of fact for decision by the Board of Inland Revenue (§ 147). There is no such appeal from the General Commissioners, whose decision on a point of fact, with the exception already noted, is final. On a point of law an appeal may be made from either the General or Special Commissioners to the High Court and thereafter to the Court of Appeal and the House of Lords (§ 149).

The Special Commissioners also hear appeals under § 37 (1918) or § 30 (1921), in respect of exemption of the income of charities; under § 36 (1918), in respect of claims for repayment of tax on interest paid to banks (§ 19—1925); under § 30 (1922), as to the allocation of income to a charity from residue not paid over until after one year after the testator's death; under § 27 (1924), on questions of domicile, residence and ordinary residence; under § 24 (1923), and § 42 (1927), in respect of claims for relief on the grounds of error or mistake in returns, etc., under § 24 (1920), as amended by § 20 (1926), in respect of claims for allowances made by non-resident British subjects.

Appeals to the Special Commissioners in cases arising in the London District are heard at the Commissioners' Offices, York House, Kingsway. Cases are also heard outside the London District by Special Commissioners who attend throughout the country for the purpose of hearing appeals made to them.

The Special Commissioners also assess the profits of railway companies and of railway officials under Schedule E; income from British, Foreign, and Dominion Revenues under Schedule C; determine appeals in respect of Dominion Tax Relief, and perform other special duties.

The sur-tax is assessed and charged by the Special Commissioners, who hear all appeals thereon.

(g) Board of Referees.

The Board of Referees are a body of professional and business men appointed by the Treasury for dealing with certain specialised matters. Their offices are at the Royal Courts of Justice in London.

Appeals by or on behalf of any considerable number of persons engaged in any class of trade or business, for the alteration of the amount of any deduction for wear and tear, must be referred by the Board of Inland Revenue to the Board of Referees (Rule 6 (6), Schedule D, Cases I and II). They are also empowered on appeal being made to them, to fix the percentage of turnover to be adopted in arriving at the profits of a non-resident person chargeable in the name of a resident (Rule 9 (2), General Rules, All Schedules). Appeals can be made to the Board of Referees by either the company or the Commissioners of Inland Revenue from the determination of the Special Commissioners in connection with the assessment of certain companies in respect of sur-tax on undistributed profits (§ 21 and First Schedule—1922).

CHAPTER II.

The Principles of Income Tax.

§ 1.—DEFINITION OF INCOME TAX AND PERSONS LIABLE TO ASSESSMENT.

2.—THE INCOME TAX YEAR

/ 3.—STATUTORY INCOME.

4.—THE RATE OF TAX

5.—THE FIVE SCHEDULES

/ 6.—COLLECTION OF TAX AT THE SOURCE

7.—RIGHTS OF THE INDIVIDUAL TAXPAYER

8.—EARNED INCOME ALLOWANCE

9.—OLD AGE ALLOWANCE

10.—ASSESSABLE INCOME

11.—PERSONAL ALLOWANCE.

12.—CHILD ALLOWANCE

13.—HOUSEKEEPER ALLOWANCE

14.—DEPENDENT RELATIVE ALLOWANCE.

15.—TAXABLE INCOME

16.—REDUCED RATE OF TAX.

17.—LIFE INSURANCE RELIEF.

18.—SIMPLE ILLUSTRATIONS OF PERSONAL COMPUTATIONS

19.—RELIEFS AND ALLOWANCES IN TERMS OF TAX.

20.—INCOME OF MARRIED WOMEN

21.—MEMBERS OF PARLIAMENT

22.—NON-RESIDENT TAXPAYERS AND ALLOWANCES.

23.—DUE DATES FOR PAYMENT OF INCOME TAX.

24.—THE NECESSITY FOR MAKING A RETURN.

25.—ACCOUNTS IN SUPPORT OF RETURN.

26.—ACCOUNTS PREPARED BY PROFESSIONAL ACCOUNTANTS.

27.—NOTICE OF ASSESSMENT.

28.—APPEAL AGAINST ASSESSMENT.

29.—PRODUCTION OF BOOKS AND ACCOUNTS IN SUPPORT OF APPEAL.

30.—ADDITIONAL ASSESSMENTS.

CHAPTER II.

THE PRINCIPLES OF INCOME TAX.

§ 1.—Definition of Income Tax, and Persons
Liable to Assessment.

(Income Tax is a levy made by the State on all persons resident in the United Kingdom liable to assessment, and also upon persons not resident in the United Kingdom, so far as they derive income from properties, trade or employment in the United Kingdom.) The question of what constitutes "residence" is a highly technical one, and will be discussed in Chap. V. The United Kingdom, for this purpose, consists of Great Britain and Northern Ireland.

The liability to Income Tax depends entirely upon the provisions of the Income Tax Acts. There is no question of equity involved in ascertaining whether or not certain profits are assessable.

The following remarks of Lord Cairns emphasise this point :—

"If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute" (*Partington v. Attorney-General* (1869), L.R. 4 E. and I., App. 100).

Ambassadors, and other accredited Ministers of any Foreign State, High Commissioners, Agents General, etc., resident in the United Kingdom are not assessable to Income Tax (Rule 2 (c), Sch. C; § 19—1923; § 26—1925); and National Health Insurance Funds (§ 39), and charities satisfying certain conditions are exempt (*see* Chap. IX, § 7).

§ 2.—The Income Tax Year.

The Income Tax Year, known as the “fiscal year” or “year of assessment” commences on 6th April in one calendar year and ends on 5th April in the succeeding calendar year (§ 2), *i.e.*, the year of assessment 1933-34 is the year ending 5th April, 1934.

§ 3.—Statutory Income.

The meaning of the term “income” from an Income Tax point of view is important, since it is not generally the actual income, but rather a statutory income (*i.e.*, a hypothetical income measured according to rules laid down by Statute), upon which the tax is levied.

Many persons imagine that this is unnecessarily complicating matters, and that a tax based on actual income would be far more simple for the public to comprehend; but even if such an alteration were made it would still be necessary to legislate on the meaning of the term “actual income.”

If everybody were in receipt of a fixed salary, comparatively little difficulty would be experienced; but this is not the case, and as matters stand it is undoubtedly a fact that there would exist just as much trouble in understanding what constituted actual income as already exists in the matter of statutory income.

Further complications would arise in practice, in that delay would obviously arise in the making of assessments and collection of tax if the actual income were to be taken as the basis. Complicated rules would be required to make the assessment and collection of the tax practicable. For example, the annual accounts of a business may not be prepared and agreed until some months after the accounting date; allow a few more months for their being considered by the authorities, and for the assessment and collection of the tax, and it will readily be seen that the annual Budget presented to Parliament would be even more difficult to frame than it is at present, and that rules would be required to determine the periods within which and to which the accounts should be made up. (If the principle of making the tax payable one year in arrear were introduced to meet these difficulties (*cf.* sur-tax), it might simplify assessments, but the average taxpayer would possibly appreciate such a scheme even less than he does the present system !)

(The statutory income is a hypothetical income based upon the actual income received in the year of assessment from certain sources, and on the income received in the preceding fiscal year from other sources, according to the nature of the income.)

The TOTAL INCOME for Income Tax purposes means the TOTAL STATUTORY INCOME after deducting the (annual) charges payable thereout (*i.e.*, annual interest, ground rents, etc.). Although not strictly an "annual charge," bank interest paid also constitutes a deduction if not charged in the Profit and Loss Account.

The tax is to be charged in respect of all property, profits or gains respectively described or comprised in the Schedules marked A, B, C, D and E contained in the First Schedule to the Act of 1918, and in accordance with the Rules respectively applicable to those Schedules (§ 1—1918). (Although some of these Rules are artificial, they form a code which has worked surprisingly well, and they determine exactly what basis shall be adopted in respect of every class of income.

§ 4.—The Rate of Tax.

As has been explained in Chapter I, the Income Tax is an annual tax, imposed by the Finance Act each year. (Tax is levied on the statutory income at a standard rate fixed by the Finance Act passed in the year of assessment, and in respect of the income in excess of a stated amount (at present £2,000) at higher rates (termed the sur-tax) fixed by the Finance Act passed in the following year. (Sur-tax is described in Chap. VIII, *post.*) For the five years ended 5th April, 1930, the standard rate was 4/- in the £; for 1930-31 it was 4/6 in the £; for 1931-32 and 1932-33 it was 5/- in the £; and for 1933-34 it is again 5/- in the £.)

§ 5.—The Five Schedules.

(The Schedules already mentioned in § 3 above contain the Rules for ascertaining the statutory income derived from various sources.) Each Schedule deals with a different source—just as a business man, when asked to prepare a list of his sources of income, would naturally group sources of a like nature together)

(The reader should always bear in mind the fact that there is only one Income Tax; the Schedules

are merely means of arriving at the liability to that tax on the income derived from the respective sources. The popular, though somewhat misleading terms, "property tax" and "farmer's tax" should be avoided wherever possible. (For facility in collection of tax, assessments are made under the appropriate Schedules, but these assessments are merely parts of the one levy,

The Schedules are now explained generally; each is described more exhaustively in later chapters.

SCHEDULE A.—Relates to income from the PROPERTY IN LANDS AND BUILDINGS in the United Kingdom.

The assessment is BASED ON the ANNUAL VALUE of the property, less a (statutory) deduction for repairs, insurance, etc.

SCHEDULE B.—Relates to profits derived from the OCCUPATION OF LAND. (The assessment is BASED ON the ANNUAL VALUE of the property, except in certain cases.

SCHEDULE C.—Relates to INTEREST AND DIVIDENDS PAYABLE OUT OF PUBLIC FUNDS of the United Kingdom, the Dominions, or any Foreign State where payment is entrusted to any agent resident in the United Kingdom. The BASIS of assessment is the EXACT AMOUNT OF THE INTEREST, etc., paid. (The assessment is on the agent who pays the interest, etc., see Chap. III, § 3).

SCHEDULE D.—Relates to PROFITS FROM TRADE OR BUSINESS and any OTHER ANNUAL PROFITS OR GAINS which do not come under any of the other Schedules. (The BASIS of assessment is almost (ii) invariably the PROFITS OR GAINS OF THE YEAR COMPLETED PRIOR to the commencement of the year of assessment.)

SCHEDULE E.—Relates to ^(a)SALARIES, FEES, etc., of all employed persons, including manual weekly wage earners. Up to 1927-28 the assessment was based on the actual salary, etc., for the year. After 1927-28 the assessment is based on the ACTUAL SALARY, etc., for the PREVIOUS FISCAL YEAR, although weekly wage earners continue to be assessed on the income of the year of assessment.

§ 6.—Collection of Tax at the Source.

The practice of collecting Income Tax at the source dates back as far as 1803. It has many advantages from the point of view of the Inland Revenue Authorities, inasmuch as it saves a considerable amount of unnecessary expense in collecting the tax, and prevents a simple method of evasion which would otherwise exist. It is principally confined to property, dividends and interest.

In the case of income taxable under Schedule A, the tax is usually collected in the first instance from the tenant, who subsequently deducts from the next payment of rent the amount of tax he has paid on account of his landlord. The landlord is bound to allow this deduction from the next succeeding payment of rent under a penalty of £50 (Rule 23, General Rules), but in no case can the amount so deducted exceed the standard rate in the £ on the rent actually paid. The landlord is not compelled to allow the deduction from any but the next succeeding payment of rent (*Hill v. Kirshenstein* (1920), 3 K.B. 556), except in the circumstances stated on pp. 83 and 84 *post*. In the case of

weekly property and tenement dwellings, the tax is assessable upon the landlord direct, and not collected in the first instance from the tenant (Rule 8, No. VII, Sch. A). (A leaseholder is authorised to deduct tax from the ground rent he pays, at the standard rate (Rules 4 and 5, No. VIII, Schedule A; § 39—1927). The tax deductible from ground rent is not legally deductible before the lessee has himself paid tax to cover the amount (*Barnes v. Kiffin* (1916), W.N. 166), but the practice is to deduct tax from each payment.

In the case of income taxable under Schedule C, (the persons entrusted with the payment of the interest, annuities, dividends, etc., are required to deduct tax on making such payment (Rules of Schedule C). There are exceptions to this rule, however. (In the case of dividends payable out of the public funds, where the half-yearly amount does not exceed 50s., and such dividends are not payable upon coupons annexed to stock certificates payable to bearer, the amount is paid gross, and the tax not deducted (Rules of Schedule C). The same remarks apply to interest and dividends paid to a depositor in any (savings bank) (The reason for this is to save small investors, who are likely to be exempt from Income Tax, from being put to the trouble of reclaiming the tax.)

In the case of Inscribed and Registered $3\frac{1}{2}\%$ War Stock (and its 5% predecessor), Schedule C does not apply, and the interest is paid gross unless the holder requires the tax to be deducted before payment (§ 27—1921). Interest arising from such stocks is assessed under Case III of Schedule D (§ 49—1918; § 23—(No. 2), 1931).

In the case of income of companies taxable under Schedule D, the tax in respect of the whole profits is assessed upon the company in the first instance, and the company is empowered to deduct tax from the dividends paid (Rule 20, General Rules; § 7—1931).

As to the position of co-operative societies, etc., see Chap. IX, § 7.

As regards annual interest, the person paying it is entitled to deduct Income Tax therefrom at the appropriate rate, and, unless the payment is out of funds already taxed, is obliged to account for such tax to the Revenue (Rules 19 and 21, All Schedules Rules). For 1928-29, and subsequent years, the appropriate rate to be deducted is in all cases the standard rate of tax at the time when the payment is due (§ 39—1927).

Even in the case of annual interest payable to foreigners, the person paying the interest is liable for the tax (except in cases exempted under General Rule 2, Schedule C) and must account for it to the Inland Revenue Authorities, even if the foreigner refuses to allow such deduction from his interest. (The reason for this is that the obligation is imposed by law upon the person paying the interest, and if he is not in a position to insist upon the deduction of tax when making the payment he must bear it himself.)

(The tax on mine rents and royalties, and on royalties payable in respect of patents is also collected at the source.) In the case of copyright royalties, however, the tax is collectible at the source only where the payment is to a non-resident and the royalties relate to copies of works not exported from the United Kingdom (§ 25—1927).

The method of assessment in the case of the partners of a private firm is a further example of the principle of collection of tax at the source. Each partner is entitled to claim his individual allowances, but, after adjusting these, the assessment is made upon the firm and the obligation for payment rests with the firm. (The tax appropriate to each partner is then debited to his Current Account as drawings.)

In the case of interest payable out of rates, the officer managing the accounts must deduct tax and pay it over to the Revenue (Misc. Rule 6, Sch. D); and any agent in the United Kingdom entrusted with the payment of interest, etc., from colonial and foreign companies must likewise deduct and account for tax thereon (Misc. Rule 7, Sch. D).

Where the interest or dividends of a Foreign State or British Possession are paid in the United Kingdom, tax will be deducted upon payment; but in these cases persons not resident in the United Kingdom are not chargeable with Income Tax (General Rule 2, Schedule C). This does not apply to the majority of dividends or interest on funds or investments in the United Kingdom, in respect of which the person resident outside the United Kingdom has to bear Income Tax, and as a general rule is entitled to no reliefs, except in the case of certain stocks issued in connection with the War of 1914-1918, *viz.*, 4% Funding Loan (1960—1990), 4% Victory Bonds, and 3½% War Loan (and its 5% predecessor), which are exempt if beneficially owned by persons not ordinarily resident in the United Kingdom (§ 46—1918; § 22—(No. 2), 1931).

The principles of deduction of Income Tax at the source are elaborated in later chapters. It has been

thought sufficient to explain the general principles at this point, as a fuller knowledge of the law and practice of assessment is required before the detailed rules can be properly appreciated.

(Readers must bear in mind the fact that where income has been taxed by deduction, it cannot be again assessed in the hands of the recipients.) Hence the Schedules embrace only such income as has not been taxed at source. Students frequently ask: "Under what Schedule are dividends assessed on the recipient?" The answer is as above; there is no need to assess them on the recipient since they are taxed at source.

(Nevertheless, ALL income must be included in the "total" income, i.e., the statutory income from all sources, in order to compute the taxpayers' total liability to tax. He is then given credit for the tax suffered by deduction, subject to adjustment for the tax which he himself deducts from annual charges. If he has suffered too much tax by deduction he can claim repayment of the excess.

If a person entitled to deduct tax at the source omits to do so, he is not entitled to recover it from subsequent payments, since payments voluntarily made under a mistake of law cannot be recovered.) (There are many case decisions on this point; *see, inter alia*, *Warren v. Warren* (1895), 72 L.T. 628.) (The tax may, however, be deducted on payment of arrears of annual payments (*Shrewsbury v. Shrewsbury* (1906), 23 T.L.R. 100). Where tax has not been deducted at source the recipient of such income cannot claim any repayment, since he has borne no tax thereon.

Where the tax should have been deducted under General Rule 21 (*see* Chap. IV, § 6), both the payer

and the payee may be assessed (*Lord Advocate v. Forth Bridge Railway Co.* (1890), 28 S.L.R. 576), but in practice a claim is only enforced against the payer for any balance remaining due after the payment of the tax assessed on the payee.

§ 7.—Rights of the Individual Taxpayer.

Every taxpayer should make certain that he receives full benefit of all the rights to which he is legally entitled in arriving at his Income Tax liability.

The allowances to which an individual is entitled are described in §§ 8—17 of this chapter. It is a condition precedent to any of the claims that the taxpayer shall have made a return of his total income and shall have completed the appropriate claim sections on that return, or made a separate claim for the allowances. No such allowances are available for sur-tax purposes.

A claimant is not entitled to allowance or deduction or relief in respect of any income the tax on which he is entitled to charge against any other person, or to deduct, retain, or satisfy out of any payment which he is liable to make to any other person (§ 17—1918, and § 32—1920).

§ 8.—Earned Income Allowance.

Individuals are allowed a deduction amounting to one-fifth of their earned income, the maximum amount of such deduction being limited to £300 in the case of any individual taxpayer (§ 8—(No. 2) 1931). The income of a wife is included with that of her husband and the allowance is calculated on the total

amount of their joint earned incomes, with the maximum allowance of £300 in all.

Prior to 1931-32, the allowance was one-sixth of the earned income, maximum allowance £250 (§ 15—1925).

Section 14 (3) defines the term “earned income,” as follows :—

- (1) Any income arising in respect of any remuneration from any office or employment of profit held by the individual or in respect of any pension, superannuation, or other allowance, deferred pay, or compensation for loss of office given in respect of the past services of the individual or of the husband or parent of the individual in any office or employment of profit, or given to the individual in respect of past services of any deceased person, whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation allowance, or deferred pay or not; and
- (2) Any income from any property which is attached to or forms part of the emoluments of any office or employment of profit held by the individual; and
- (3) Any income which is charged under Schedule B or D or the rules prescribed by Schedule D, and is immediately derived by the individual from the carrying on or exercise by him of his trade, profession, or vocation, either as an individual or, (in the case of a partnership, as a partner personally acting therein.)

The expression “earned income” also includes any income in respect of Civil List Pensions (§ 33—1920), and any annuity, pension or annual payment paid to a person, or to his widow or child, or any relative or dependent of his, by the person under whom he held the office or by whom he was employed, or by the successors of that person, notwithstanding that the pension or payment is voluntary (§ 17—1932).

- (a) The first clause covers remuneration from office or employment of profit and relates especially to salaries of all persons employed by

others, remuneration of Government officials, and directors and other officials of companies and other bodies.

It will be noted that the clauses relating to pensions covers all forms of pensions paid to the individual himself, or to his widow or children in respect of his past services.

- (b) In connection with the second clause it should be remembered that although income arising from property taxable under Schedule A usually falls under the heading of unearned income, there are isolated cases where such income is properly regarded as earned. The question depends on whether the income from the property forms part of the emoluments of the office or employment of profit. If this can be satisfactorily proved, such income will be regarded as earned. An illustration of this rule will be seen in the case of a clergyman who lives rent free in a vicarage. As he pays no rent he cannot recoup tax under Schedule A, charged on him as tenant, from any landlord, and is obliged to bear it himself. He may, however, claim that the annual value of the property shall be regarded as part of the emoluments of his office, and thus obtain the earned income allowance thereon (§ 22—1919).
- (c) The third clause deals specifically with the statutory profits of the occupiers of agricultural property derived from the exercise of their personal labour; also the profit accruing to a person carrying on a trade or business assessable under Schedule D, where such person

is actively engaged in the business, and is capable of binding the firm in his business relations with the outside world.

Summarising the above remarks, earned income will include :—

- (1) Salaries and wages of employees, whether fixed in amount or rate, or calculated by way of percentage or otherwise, and pensions.
- (2) Profits derived from the occupation of farms, etc., taxable under Schedule B.
- (3) Directors' remuneration, including bonuses, for services rendered to the company, and for work done for the general benefit of the shareholders.
- (4) The business profits of an individual or of a partner in a firm. (This will include partners' salaries and interest on capital.) Both these items are merely appropriations of profit; the latter item necessarily falls under the heading of earned income, since the Partnership Act, 1890, provides that in the absence of mutual agreement no interest on capital shall be charged. If the item were treated as unearned income, all that the individuals concerned would have to do to get the benefit of earned income allowance would be to ignore interest on capital altogether, or to make an adjustment of the allocation of the profits between the partners to compensate them for the non-adjustment of their respective rights in the matter of capital.

The profits of a sleeping partner will come under the heading of unearned income, and for the purpose

of ascertaining whether any partner is "sleeping" or "acting" the (precedent acting partner) is required to make a declaration in the firm's return for assessment as to this point.

As to what precisely constitutes an acting partner must be determined according to the facts of each individual case, but it would appear that very slight action on the part of a partner will be sufficient to enable him to be classed as an acting partner. In some cases the Commissioners may require production of the partnership deed, if one exists.

Unearned income may be regarded as all income which is not "earned income." This will include :—

- (1) Income from investments.
- (2) Profits of a limited or sleeping partner.
- (3) Interest receivable on loans.
- ✓ (4) Income derived from ownership of property, *i.e.*, land, buildings, etc.

2 An apparent anomaly seems to arise in the case of a private firm which has been converted into a private limited company. So long as the business remains a private firm, the profits are regarded as earned income ; but immediately the conversion takes place, any distribution of profits by way of dividend is regarded as unearned income.

This, at first sight, would seem illogical and unjust, but when it is taken into consideration that directors' fees come under the heading of earned income ; that in all probability the partners in the old firm will be the directors in the new private company ; that the company enjoys limited liability, which the private firm did not, the injustice is not so great as might be supposed. In such cases, it is a common practice

to divide the whole or a major part of the profits as directors' fees in order to secure the allowance.

In a large number of cases tax on all the unearned income will have been deducted at the source. In other cases, however, the income from all sources may include unearned income not already taxed, such as income from foreign property received direct, or in certain cases interest on loans. In such event tax will be payable directly by the recipient upon such income under its appropriate schedule.

Where expenses are properly deductible from remuneration (*e.g.*, contributions to approved superannuation funds), the earned income allowance must be calculated on the net amount of remuneration after deducting allowable expenses (*Frame v. Farrand* (1928), 13 T.C. 861). Similarly, where the annual charges exceed the unearned income, so that the balance must be paid out of earned income, earned income allowance can only be calculated on the net earned income after deducting the excess charges (*Adams v. Musker* (1930), 15 T.C. 413).

Illustrations.

- ✓ (1) Salary £600, contribution to Superannuation Fund £30.
The Earned Income Allowance is calculated on £570.
- (2) Salary £400, other Income (unearned) £200, Annual Charges (Loan Interest, etc.) £280. The Earned Income Allowance is calculated on £400—(£280—£200)=£320.

§ 9.—Old Age Allowance.

A special form of allowance was introduced by § 15 of the Finance Act, 1925, applicable where a taxpayer or his wife living with him is over the age of 65 and the total income from all sources (including that of

[the wife, if any) does not exceed £500. In such circumstances the taxpayer can claim a deduction of one-fifth (§ 8—(No. 2) 1931) (prior to 1931-32, one-sixth) of his total income whether earned or not. A form of marginal relief is given where such a taxpayer's income slightly exceeds £500, in which case he can elect to pay—

- (a) The amount of tax he would pay if his income were exactly £500 ; plus
- (b) One-half of the amount by which his income exceeds £500.

(It should be noted, however, that the allowance granted to a taxpayer in these circumstances is in substitution for earned income allowance, and not in addition to it.) The operation of this marginal relief is illustrated in Chap. II, § 18 (3).

§ 10.—Assessable Income.

The expression “assessable income” is applied to the sum remaining after deducting from the total statutory income the earned income allowance or the age allowance, whichever is appropriate.

§ 11.—(a) Personal Allowance (§ 18—1920 ; § 8—(No. 2) 1931).

Every single taxpayer is entitled to a personal allowance of £100 (prior to 1931-32, £135), and a taxpayer who proves that for the year of assessment he has his wife living with him or that his wife is wholly maintained by him is entitled to a personal allowance of £150 (prior to 1931-32, £225). (The position where the wife is separated from her husband is explained in Chap. II, § 20.)

(b) Additional Personal Allowance (§ 18—1920; § 46—1927; § 8—(No. 2) 1931.)

If the taxpayer's total income includes any earned income of his wife, the personal allowance is increased by an amount equal to four-fifths (for 1928-29, 1929-30 and 1930-31, the allowance was five-sixths; prior to 1928-29 the allowance was nine-tenths) of the amount of that earned income, but not exceeding in any case an allowance of £45.

It should be noted that this allowance does not prejudice the earned income allowance in any way, the intention being that where the wife earns income, the *personal allowance* shall be increased. Where, therefore, the wife has an earned income of exactly £56 5s., no tax is payable thereon, since £11 5s. is deducted as earned income allowance, and £45 as additional personal allowance. (The additional personal allowance is commonly misnamed "Wife's Earned Income Relief"; a description which is misleading.) It should be noted that the additional personal allowance is not affected by the old age allowance, where appropriate.

The Commissioners can refuse the allowance unless they are satisfied that the wife is actually in receipt of the income, and entitled thereto in her own right (*Thompson v. Bruce* (1927), 11 T.C. 607). This fact is of great importance where a sole trader charges in his accounts a salary paid to his wife.

§ 12.—Child Allowance (§ 21—1920; § 16—1928; § 8—(No. 2) 1931).

If the claimant proves that he has living at any time within the year of assessment any child who is either under the age of sixteen or, if over that

age at the commencement of that year, receiving full time instruction at any university, college, school, or other educational establishment, he is entitled in respect of one child to a deduction of £50, and in respect of each subsequent child to a deduction of £40. (For 1928-29, 1929-30 and 1930-31, the allowances were £60 and £50 respectively, whilst prior to 1928-29 the allowances were £36 and £27 respectively, and no allowance was given unless the child was alive at the commencement of the year of assessment (*i.e.*, on 6th April); a child born during the year not being eligible for relief in that year).

The term child includes a stepchild, but not an illegitimate child, unless the parents have subsequently married each other.

Relief is also given for any other child (*e.g.*, an adopted child) who is in the custody of and maintained by the tax-payer at his own expense, provided that no other individual is obtaining this allowance.

No deduction can be made in respect of any child who is entitled, in his own right, to an income exceeding £50 per annum (for 1928-29, 1929-30 and 1930-31, the amount was £60; prior to 1928-29, £40), but any income derived by the child from any scholarship, bursary or other similar educational endowment is ignored.

If any question arises as to whether an allowance can be claimed for a child over 16, the Commissioners may consult the Board of Education.

§ 13.—Housekeeper Allowance (§ 19—1920; § 21—1924; § 8—(No. 2) 1931).

A WIDOWER who has residing with him a female relative of himself or of his deceased wife, or any

other female person (if no female relative is able and willing to act) for the purpose of having charge and care of any child of his (in respect of whom a child allowance is given) OR in the capacity of housekeeper, is entitled to a deduction of £50 (prior to 1931-32, £60), provided that—

- (a) No other individual is entitled to a deduction in respect of the same female relative or, if so entitled, has relinquished his claim, and
- (b) If the female relative is a married woman her husband has not been allowed a deduction of £150 as his personal allowance under § 18—1920.
- (c) Not more than one deduction of £50 is to be allowed to any claimant in any one year.

These provisions apply *mutatis mutandis* to a widow as well as to a widower.

It would appear that the restrictions as to other persons relinquishing their claims under (a) and (b) above apply only where the housekeeper is a relative, but the practice is to apply them to any housekeeper.

An individual who is UNMARRIED and has living with him either his mother (being a widow or living apart from her husband), or some other female relative, maintained by him at his own expense, for the purpose of having the charge and care of any brother or sister of his (being a child in respect of whom a deduction is allowable) is entitled to an allowance of £50, provided no other person is entitled to claim an allowance in respect of the same person, or if so entitled has relinquished his claim thereto (§ 20—1920 ; § 21—1924 ; § 8—(No. 2) 1931).

§ 14.—Dependent Relative Allowance (§ 22—1920).

If the taxpayer proves, that he maintained at his own expense any relative of himself or of his wife, such relative being incapacitated by old age or infirmity from maintaining himself, or herself, or being his or his wife's widowed mother, whether incapacitated or not, a deduction of £25 is made, provided that such relative's total income does not exceed £50 a year. (It should be remembered that the taxpayer's contribution, being a voluntary allowance, is not part of the relative's total income for Income Tax purposes.)

If two or more persons jointly maintain such a relative, the deduction of £25 is apportioned between them in proportion to the amount or value of their respective contributions. This section applies to a taxpayer being a female person in the same way as it applies to a male person, with the substitution of "husband" for "wife." It also includes female relatives who are incapacitated.

A deduction of £25 is allowed to a taxpayer who by reason of old age or infirmity is compelled to depend upon the services of a daughter resident with and maintained by him or her.

It should be noted that there is no residential qualification except in respect of the daughter, but in her case there is no income limit.

§ 15.—Taxable Income.

The expression "taxable income" is applied to the sum remaining, after deducting from the assessable income such of the above allowances as are appropriate.

§ 16.—Reduced Rate of Tax.

The first £175 of taxable income is charged to Income Tax, at half the standard rate in the £ (§ 8—(No. 2) 1931) (for 1930-31, the first £250 was charged at four-ninths of the standard rate, *i.e.*, 2/-; prior to 1930-31, the first £225 was taxed at half the standard rate (§ 23—1920)), and the balance at the full standard rate.

§§ 17.—Life Insurance Relief (§ 32—1918; §§ 26 and 32—1920).

From the tax payable upon the taxable income, a deduction is allowed (in terms of tax) in respect of premiums paid on contracts for life insurance or for contracts for deferred annuities on the life of the taxpayer or his wife.

The allowance can be claimed in respect of—

- (a) Premiums (whether annual or not) paid by the claimant in respect of an insurance, or contract for a deferred annuity, on his own life or on that of his wife;
- ✓(b) Premiums (whether annual or not) paid by the claimant's wife out of her separate income in respect of an insurance, or contract for a deferred annuity, on her own life or on that of her husband; and
- (c) Any sum which the claimant is liable to pay, or to have deducted from his salary to secure a deferred annuity to his widow, or provision for his children after his death.

In the case of (a) and (b), the contract must be made with any Insurance Company legally established

in the United Kingdom or in any British Possession, or lawfully carrying on business in the United Kingdom, or with a registered friendly society, or in the case of a deferred annuity, with the National Debt Commissioners; or insurances made or annuities contracted for with underwriters, being members of Lloyd's or of any other association of underwriters approved by the Board of Trade, who comply with the 8th Schedule to the Assurance Companies Act, 1909 (§ 20—1932).

Where premiums in respect of any assurance effected with (a registered friendly society) are made payable for shorter periods than three months, a person claiming relief must produce a certificate signed by an officer of the society specifying the correct amount of premiums paid during the year of assessment. A person who wilfully gives or produces a false certificate shall forfeit the sum of £50.

The limit of the amount on which the relief is calculated is the premiums paid, or one-sixth of the total statutory income, whichever is lower, subject to the following conditions:—

- (a) Not more than 7 per cent. of the capital sum payable at death, exclusive of other benefits such as bonuses, will be allowed in respect of any one policy.
- (b) In the case of policies or contracts which do not secure a capital sum on death, the total amount on which the allowance is calculated \checkmark is not to exceed £100, and the policies must have been taken out not later than 22nd June, 1916. In the case of such policies or contracts

effected after that date, no allowance is made, except where they were effected in connection with certain superannuation or pension schemes.

(c) The limit of one-sixth of the total statutory income does not apply in the case of War Insurance Premiums, nor does the limit of 7 per cent. of the face value of the policy, since these premiums are in all cases admitted in full.

(d) Allowances in respect of life insurance premiums are not granted unless the person claiming is resident in the United Kingdom, except in the case of British subjects, persons in Crown Service, Missionary Service, etc. (§ 24—1920).

The allowance which can be claimed is the amount of tax at the “appropriate rate” on the amount of the allowable premiums paid during the year of assessment. This “appropriate rate” is—

In the case of policies taken out **ON OR BEFORE** 22nd June, 1916 :—

Half the standard rate of tax where the total statutory income from all sources does not exceed £1,000 ;

Three-fourths of the standard rate of tax where the total statutory income from all sources exceeds £1,000, but does not exceed £2,000 ;

The standard rate of tax where the total statutory income from all sources exceeds £2,000.

In the case of policies taken out **AFTER** 22nd June, 1916 :—

Half the standard rate of tax whatever the amount of the statutory income.

For 1930-31 in all cases where the appropriate rate was half the standard rate, the relief was subject to these limitations :—

- (i) Where the taxable income did not exceed £250, the relief was limited to four-ninths of the standard rate, and
- (ii) Where the taxable income was slightly over £250, the relief was similarly limited in respect of such part of the premiums as exceeded the amount by which the taxable income exceeded £250 (§ 11—1930). (*See Illustration on pp. 49—50.*)

Prior and subsequent to 1930-31, these limitations do not apply.

Where a taxpayer elects to apply a cash bonus on his policy as part payment of the premium due, he is entitled to relief only on the amount he actually pays to the Insurance Company in the year of assessment (*Watkins v. Jones* (1928), 14 T.C. 94).

An allowance of tax may be claimed at half the standard rate in respect of compulsory contributions under the Widows' Orphans' and Old Age Contributory Pensions Act, 1925, on £1 in the case of a man and 10/- in the case of a woman.

Illustration.

A.s' total statutory income for the year 1933-34 is £4,200.

During the year he pays the following premiums in respect of life policies :—

(1) STANDARD ASSURANCE COMPANY :—

Whole Life Policy for £3,000 dated 1911 .. £70

(2) MERCANTILE ASSURANCE COMPANY :—

Whole Life Policy for £12,000 dated 1912 .. £400

(3) LANCASTER LIFE ASSURANCE COMPANY :—

Deferred Annuity Premium—Policy dated 1913 £150

(4) EQUITABLE ASSURANCE SOCIETY :—

(a) Deferred Annuity Premium—Policy dated 1914 £80

(b) " " " " " " 1917 £50

(5) SUN LIFE ASSURANCE COMPANY :—

Endowment Policy for £2,000—dated 1933 .. £180

What relief can A. obtain in respect of the above-mentioned premiums ?

(1 & 2) The First and Second Premiums, *viz.*, £70 + £400, are legally allowable since neither exceeds 7 per cent. of the capital sum assured, .. £470

(3 & 4) The Third and Fourth Premiums must be taken together, and as they amount in the aggregate to more than £100, A. can claim an allowance of 100
No part of the £50 premium could be allowed, as policy is dated after 22nd June, 1916.

✓ (5) The Fifth Premium exceeds 7 per cent. of the capital sum assured and therefore only 7 per cent. is allowable 140

£710

The allowance is however limited to one-sixth of the statutory income, *i.e.*, to £700. In such cases, the premiums on the latest dated policies are restricted first, thus giving to the taxpayer the maximum rate available, and therefore the duty deductible in respect of Life Assurance in the Income Tax Assessment for the year 1933-34 will be as follows :—

£570 at 5/- in £ £142 10 0

£130 at 2/6 in £ 16 5 0

Total Tax deductible .. £158 15 0

NOTE.—An Endowment Policy is one in which a capital sum is payable on a certain date or earlier death, and, since it assures a capital sum on death, the premium thereon is allowed.

Marginal Relief.

It has been pointed out that in the case of policies dated not later than 22nd June, 1916, the rate of tax at which deductions in respect of life assurance premiums are allowed depends upon total statutory income, and it follows from this method of allowance that injustices as between taxpayers with incomes only slightly different in amount must inevitably occur at various stages. Thus with a total income of £1,000

and a standard rate of 5/- in the £, an allowance at only 2/6 in the £ can be made, whereas with a total income of £1,001 the rate is 3/9 in the £. To obviate these inequalities a "marginal relief" clause was introduced in § 26 (7), 1920. This relief clause provides that when the tax ultimately payable by any person, after deducting the allowance in respect of life assurance premiums, is greater than the amount of tax which would be payable if the total income of that person exceeded £1,000 or £2,000, as the case may be, this allowance shall be increased by a sum representing the amount by which tax at one-fourth of the standard rate upon the amount of the premiums or payment in respect of which the allowance is made, exceeds the amount of the tax at the standard rate on the amount by which the total income falls short of £1,000 or £2,000, as the case may be.

The following Illustration shows both the necessity for and the effect of this clause:—

Taxpayer A. has a Total Income of £1,998 and pays Life Assurance Premiums £300 for year 1933-34.

Taxpayer B. has a Total Income of £2,001 and also pays Life Assurance Premiums £300 for the same year.

Both are married, and have no children, etc., in respect of which claims can be made. All policies are dated 1915.

A. is liable for Income Tax as follows:—

Total Assessable Income	..	£1,998	
Less Personal Allowance	..	150	"
 Taxable Income	..	<u>£1,848</u>	
Chargeable £175 at 2/6	..	=	£21 17 6
£1,673 at 5/-	..	=	418 5 0
 Total	.. ..		<u>£440 2 6</u>
Less Life Assurance Relief—			
£300 at 3/9	.. ..	=	56 5 0
 Net Tax payable on this basis			<u>£383 17 6</u>

B. is liable for Income Tax as follows :—

Total Assessable Income	..	£2,001	
Less Personal Allowance	..	150	
Taxable Income	..	<u>£1,851</u>	
Chargeable £175 at 2/6	..	=	£21 17 6
1,676 at 5/-	..	=	419 0 0
Total	..		£440 17 6
Less Life Assurance Relief—			
£300 at 5/-	..		75 0 0
Net Duty payable	..		<u>£365 17 6</u>

Thus A. with an Income £3 less than B. would pay £18 more Income Tax.

Under the provisions of this section, however, A. is entitled to a further allowance of £18 5s. 0d. computed thus—

Amount of Premiums £300 at 1/3	=	£18 15 0
Less £2,000 minus £1,998 = £2		
✓ at 5/-	..	10 0
Additional Allowance		£18

making his total allowance for Life Assurance Premiums £74 10s. 0d. and his tax payable only £365 12s. 6d., or less by 5/- than the tax payable by B.

It should be noted that in the application of this marginal relief, the additional quarter of the standard rate is allowed both on policies dated on or before 22nd June, 1916, and on those dated thereafter. This is an anomaly arising out of the wording of § 32 (9)—1918, (§ 26 (7)—1920); although it is undoubtedly contrary to the intention of the Act, benefit should be taken of it in appropriate cases, since in the application of Income Tax Law the strict wording of the Act must be followed. The result is that in cases where this anomaly arises the taxpayer obtains a greater relief than he would obtain if his income were over £1,000 or £2,000, as the case may be.

Example.

C. has a Total Statutory Income of £990, is single and pays Life Insurance Premiums of £150, of which £80 is in respect of pre-1916 policies.

C.'s liability for Income Tax for 1932-3 is as follows :—

Total Statutory Income	..	£990	
Less Personal Allowance*	..	100	
		<hr/>	
Taxable Income	.. ..	£890	
Chargeable £175 at 2/6	.. ..		£21 17 6
715 at 5/-	.. ..		178 15 0
			<hr/>
			£200 12 6
Less Life Assurance Relief—			
£150 at 2/6	..	£18 15 0	
Add Marginal Relief			
£150 at 1/3	£9 7 6		
Less £10 at 5/-	2 10 0		
	<hr/>	6 17 6	
		<hr/>	25 12 6
Net Tax payable	.. ..	£175 0 0	

Had C.'s Total Statutory Income been £1,001, his total Life Assurance Relief would have been :—

£80 at 3/9	.. ..	£15 0 0
70 at 2/6	.. ..	8 15 0
Total Relief	.. ..	£23 15 0

It is obvious, of course, that it is only where there are policies dated on or before 22nd June, 1916, that marginal relief can arise at all. The primary test must be satisfied by taking the normal rates of relief in the first instance. Where ALL policies bear later dates there is no anomaly, since the relief is at half the standard rate.

§ 18.—Simple Illustrations of Personal Computations.

(1) D. is a married man with three children under 16. His income consists of a house, of which the Net Annual Value for Assessment is £120, Director's Fees £600, and interest on £900 4% Consols.

His wife has a business, the profits of which are £300 for assessment in 1932-33. D. pays a premium of £30 on a policy on his own life for £1,200; his wife pays a premium of £20 on a policy on his life for £700. D.'s own policy is dated 1912, his wife's 1929.

The house is subject to a ground rent of £20 per annum. Mrs. D. maintains her widowed mother, who has no other income.

COMPUTATION FOR 1932-33.

House	£120	
Consols Interest	36	
Director's Fees	600	
Wife's Profits	300	
	<hr/>	
	1,056	
Less Ground Rent	20	
	<hr/>	
Total Statutory Income ..	1,036	
<i>Deduct—</i>		
Earned Income Allowance—		
1/3th of £900	180	
	<hr/>	
Assessable Income ..	856	
<i>Deduct—</i>		
Personal Allowance ..	£150	
Additional Personal Allowance (Maximum) ..	45	
Children Allowance (3)	130	
Dependent Relative Allowance	25	
	<hr/>	
	350	
Taxable Income	<u>£506</u>	
Chargeable £175 at 2/6	=	£21 17 6
331 at 5/-	=	82 15 0
		<hr/>
		104 12 6
<i>Less Life Assurance Relief—</i>		
£30 at 3/9	£5 12 6	
20 at 2/6	2 10 0	
	<hr/>	
		8 2 6
Net Tax to be borne ..		96 10 0

	Brought Forward	£96 10 0
But the tax deducted from the Ground Rent must be accounted for, therefore—		
Add Tax deducted from Ground Rent £20 at 5/-		5 0 0
		<hr/>
Total tax to be accounted for		101 10 0
Of this amount there has been paid by deduction at source, tax on the Consols Interest—		
£36 at 5/-		9 0 0
Leaving to be paid on direct Assessments		£92 10 0
		<hr/>
Of this amount the tax on £120 in respect of the house is payable under Schedule A, £120 at 5/- =		£30 0 0
And the balance under Schedules D and E ..		62 10 0
		<hr/>
		£92 10 0
		<hr/>

(2) E. is aged 66. He is a widower, having resident with him his sister as housekeeper. His income consists of dividends on £10,000 4% Consols and Director's Fees of £90. His life is insured for £1,000 under a policy dated 1900, on which the premium is £29.

COMPUTATIONS FOR 1932-33

Consols Interest	£400 0 0
Director's Fees	90 0 0
	<hr/>
	490 0 0
<i>Deduct—</i>	
Old Age Allowance $\frac{1}{5}$ th	98 0 0
	<hr/>
Assessable Income	392 0 0
<i>Deduct—</i>	
Personal Allowance .. 100	
Housekeeper Allowance .. 50	
	<hr/>
	150 0 0
	<hr/>
Taxable Income	£242 0 0
	<hr/>

INCOME TAX.

Chargeable.

£175 at 2/6	£21 17 6	
67 at 5/-	16 15 0	
	<hr/>	38 12 6
<i>Less Life Assurance Relief :—</i>		
£29 at 2/6		3 12 6
		<hr/>
Net Tax to be borne		35 0 0
<i>Less Tax borne by deduction at</i>		
source, £400 at 5/-		100 0 0
		<hr/>
Tax reclaimable		<u>£65 0 0</u>

(3) F., whose wife is aged 69, has an income of £510, of which £150 is earned (£30 by his wife). No tax has been deducted at source.

COMPUTATION FOR 1932-33.

If Age Allowance is not Claimed :—

Unearned Income	£360
Earned Income	150

Total Statutory Income .. 510

Deduct—

Earned Income Allowance
($\frac{1}{3}$ th of £150) 30

Assessable Income .. 480

Deduct—

Personal Allowance .. £150
Additional Personal
Allowance ($\frac{2}{3}$ ths of £30) 24

174

Taxable Income £306

Chargeable :

£175 at 2/6	£21 17 6	
131 at 5/-	32 15 0	
		<hr/>
		£54 12 6

If Age Allowance is Claimed :

Total Statutory Income .	..	£510 0 0
Less "Margin" .	..	10 0 0
		<hr/>

Substituted Income .	..	500 0 0
Deduct—Age Allowance ($\frac{1}{3}$ th)	..	100 0 0
		<hr/>
		400 0 0

	Brought forward	..	£400	0	0
<i>Deduct—</i>					
	Personal Allowance	..	£150		
	Additional Personal Allowance	24			
				174	0 0
				<u>£226</u>	<u>0 0</u>
Chargeable—£175 at 2/6 ..	..		£21	17	6
51 at 5/- ..	..		12	15	0
				<u>34</u>	<u>12 6</u>
Add—Half Margin ..	..		5	0	0
				<u>£39</u>	<u>12 6</u>

The Age Allowance would therefore be claimed, resulting in a saving of £15.

(4) (a) H. had a taxable income of £280 for 1930-31, and paid £45 in Life Insurance Premiums on his own life.

Tax Payable—					
£250 at 2/-	..	..	..	£25	0 0
30 at 4/6	..	..	..	6	15 0
					31 15 0
<i>Less Life Assurance Relief—</i>					
£30 at 2/3	..		£3	7	6
15 at 2/-	..		1	10	0
				<u>4</u>	<u>17 6</u>
Net Tax Payable	..	..		<u>£26</u>	<u>17 6</u>

The object of the limitation of the rate of relief (*see* p. 41) was to ensure that the taxpayer should not receive relief at a rate higher than that at which he had been charged to tax on the income out of which the premium was payable. In this illustration, the premium (£45) exceeds by £15 the amount by which the taxable income (£280) exceeds £250.

There is no corresponding restriction of the higher rates of relief, where applicable, *e.g.*,

(b) X. was a married man, with 11 children under 16. His sole income was his salary of £1,200 per annum. He paid £40 premium each year on a policy taken out in 1912.

Statutory Income, 1930-31	..	..	£1,200
<i>Deduct</i> —Earned Income Allowance	½		200
			<hr/>
Assessable Income	..	..	1,000
<i>Deduct</i> —Personal Allowance	£225		
Children Allowance	560		
			<hr/>
			785
Taxable Income	..	..	£215
Chargeable at 2/-	..	..	£21 10 0
<i>Less</i> Life Assurance Relief :—			
£40 at 3/4½	..	..	6 15 0
Tax payable	..	..	<u>£14 15 0</u>

Although X. paid tax only at the 2/- rate, he was entitled to relief at 3/4½; the restriction stated on p. 41 applied only where half the standard rate would, but for the restriction, be the appropriate relief.

§ 19.—Reliefs and Allowances in Terms of Tax.

According to the provisions of § 40, Finance Act, 1927, the total statutory income should be charged at the standard rate and all the allowances be deducted in terms of tax. From the tax remaining after deducting tax on the earned income, personal, child, housekeeper and dependent relative allowances, as may be applicable, there should be deducted *one-half of the amount so remaining or tax on †£175 at *half the standard rate, whichever sum is the lower (§ 40 (2)—1927; § 10—1930; § 8—(No. 2) 1931). Life assurance relief is then given as a deduction in the same manner as that already explained.

* For 1930-31, five-ninths, i.e., 2/6.

† Prior to 1930-31, £225; for 1930-31, £250.

This new method (which is strictly the legal method) of giving effect to allowances is not employed in practice at present.

Worked in this way, Illustration (1) in § 18 of this Chapter would appear as follows:—

Total Statutory Income £1,036 at 5/-	..	..	£259	0	0
<i>Deduct</i> Earned Income Allowance, £180 at 5/-			45	0	0
			214	0	0
<i>Deduct</i> Personal Allowance ..	£150				
Additional Personal Allowance	45				
Children Allowance ..	130				
Dependent Relative Allowance	25				
		£350 at 5/-	87	10	0
			126	10	0
<i>Deduct</i> Reduced Rate Allowance —					
£175 at 2/6 (being less than half of					
£126 10s. 0d.)			21	17	6
			104	12	6
<i>Less</i> Life Insurance Relief			8	2	6
Net Tax to be borne			£96	10	0

(From this point the computation is unchanged.)

§ 20.—Income of Married Women.

The income of a married woman living with her husband is deemed to be his income, and any claim for allowance or relief must be made by the husband, who must include in his return of total income his wife's income as well as his own (Rule 16, All Schedules Rules).

Unless, therefore, express application is made for the separate assessment of the incomes of husband and wife, the husband must aggregate his wife's income with his own should he desire to claim any allowances or reliefs and it will be his duty to make a return

In cases where application is made for the purpose, separate assessments* can be claimed in respect of the income of the husband and the income of the wife. If this is done separate returns will be made, but the total allowances and deductions granted will not in any case exceed the amount ordinarily obtainable; (§ 25—1920).

Although separate assessments can be made in this way with the object of properly apportioning the incidence of the tax, nevertheless the incomes of the husband and wife will be treated as one for the purpose of ascertaining the amount of any allowances or reliefs deductible.

The application for separate assessment must be made either by husband or wife, within six months before the sixth day of July in the year of assessment (in the case of persons marrying within the year, then before the sixth day of July in the following year). The application has effect for that and subsequent years until withdrawn by notice within a like period in the year for which it is desired to revert to joint assessments (Rule 17, General Rules ; § 26—1919 ; § 40—1927, and § 22—1930).

For the purpose of a claim for allowances or deductions, a return may be made by the husband or the wife of the total joint income, but if the Inland Revenue Authorities are not satisfied with such return, they may call upon the other party to the marriage also to make a return.

The apportionments under this section are on the following basis (§ 25—1920, and § 46 and 5th Schedule —1927) :—

* Separate assessments in respect of Sur-Tax can also be claimed
(See Chap VIII, § 6)

Note
(a)

- (a) The incomes of husband and wife shall be aggregated in ascertaining the amount of the allowances, etc., so that no greater joint benefit is obtained by separate assessment of husband and wife than if no application had been made for separate assessment.
- (b) The allowance in respect of earned income must be apportioned between husband and wife in proportion to their respective earned incomes.
- (c) The age allowance must be apportioned between husband and wife in proportion to their respective total incomes.
- (d) The personal, additional personal, and child allowances, and the reduction in the rate of tax on the first £175 of taxable income must be apportioned in proportion to the amounts of their respective assessable incomes.
- (e) Relief in respect of life assurance premiums is given to whichever party to the marriage actually pays the premium. (Where the allowable premiums are restricted by the operation of the rule relating to one-sixth of the total income, the premiums on policies bearing the latest dates are abated first, thus giving to the taxpayer the maximum relief—the person paying the allowed premium still gets the relief, however inequitable it may be. Any inequities should be adjusted by agreement between husband and wife.)
- (f) Deductions in respect of an adopted child or dependent relative are granted to whichever party to the marriage actually maintains the child or relative.

Illustration.

<u>INCOME OF HUSBAND</u>			
Business Assessment, 1932-33	£2,000		
Gross Taxed Dividends	500		
Life Assurance Premiums paid by husband—			
On own life (policy dated 1919) ..	£100		
On wife's life (policy dated 1910) ..	50		
			150

<u>INCOME OF WIFE.</u>			
Business Assessment, 1932-33	£500		
Gross Taxed Dividends	500		
Life Assurance Premiums paid by wife—			
On husband's life (policy dated 1910) ..	100		

Claims are made for three children, one adopted child maintained by husband, and wife's widowed mother maintained by wife.

INCOME TAX LIABILITY IF NO CLAIM FOR SEPARATE ASSESSMENT.

Business Assessments	£2,500		
Gross Taxed Dividends	1,000		
Total Statutory Income	3,500		
<i>Deduct</i> —Earned Income Allowance (Maximum)	300		
			3,200
<i>Deduct</i> —Personal Allowance	£150		
Additional Personal Allowance	45		
Children Allowance (4) ..	170		
Dependent Relative Allowance	25		
			390
Taxable Income	£2,810		
Chargeable £175 at 2/6 in £ ..	£21 17 6		
2,635 at 5/- „ ..	658 15 0		
			680 12 6
<i>Less</i> Life Assurance Relief—			
£150 at 5/-	£37 10 0		
100 at 2/6	12 10 0		
			50 0 0
Net Tax to be borne .. .	£630 12 6		

INCOME TAX LIABILITY OF HUSBAND AND OF WIFE IF SEPARATE

ASSESSMENT IS CLAIMED.				Husband.	Wife.
From Business	..	..	..	£2,000	£500
Gross Taxed Dividends	..	..	..	500	500
Total Statutory Income				£2,500	£1,000
<i>Deduct</i> —Earned Income Allowance—					
Husband $\frac{2}{3} \times \frac{900}{100}$ of £300				240	—
Wife $\frac{1}{3} \times \frac{900}{100}$ of £300				—	60
Assessable Income				2,260	940
<i>Deduct</i> —Personal Allowance				£150	
Additional Personal Allowance				45	
Children Allowance (3)				130	
				£325	
Husband $\frac{2}{3} \times \frac{325}{100}$ of £325				£230	
Wife $\frac{1}{3} \times \frac{325}{100}$ of £325					£95
Adopted Child Allowance				40	
Dependent Relative Allowance				—	25
				270	120
Taxable Income				£1,990	£820
<i>Chargeable</i> —					
At $2\frac{6}{10} \times \frac{230}{100}$ of £175 = £123 12 0				£15 9 0	
$\frac{940}{100}$ of £175 =				£51 8 0	£6 8 6
At 5/- .. £1,866 8 0				466 12 0	768 12 0
				482 1 0	192 3 0
<i>Less</i> Life Assurance Relief—					198 11 6
£150 at 5/- (H. £50, W. £100)				£12 10 0	25 0 0
£100 at $2\frac{6}{10}$				12 10 0	
				25 0 0	
Net Tax to be borne				£457 1 0	£173 11 6

Of these sums Income Tax has been suffered by deduction from Taxed Dividends to the extent of £500, at 5/- in the £=£125 by each party, so that the Income Tax chargeable by direct assessment amounts to £332 ls. Qd. and £48 11s. 6d. respectively.

Although where the assessment is made on the wife the goods of the wife can be distrained upon for recovery of the Income Tax, the goods of the husband are nevertheless also available for this purpose, but not without a written demand for payment being first made to the husband or left for him at his usual place of residence, and only after failure on his part to pay such tax within seven days of such demand (§ 171).

A married woman who is living in the United Kingdom separate from her husband can make her own claim for allowances and reliefs without any account being taken of the income of her husband (Rule 16, All Schedules Rules). It is a question of fact whether or not a wife is living with or maintained by her husband.

The income of a widow is treated on exactly the same lines as in the case of a spinster or a bachelor, and she is in consequence entitled to claim all applicable allowances on her own behalf.

An interesting point arises in connection with the income of a lady about to be married. Immediately after marriage her income becomes part of the statutory income of her husband, and consequently her statutory income for the year in which her marriage takes place is represented by the income arising to her between the 6th April in the year of her marriage, and the date of her marriage. Thus, a lady might have been in receipt during spinsterhood of a substantial income each year, and yet be able to claim total exemption from Income Tax in respect of the year during which her marriage took place.

Illustration.

A lady in receipt of a private income of £1,500 a year marries on 6th May. Her statutory income between the 6th April and 6th May amounts to exactly £100.* She is entitled in consequence to claim entire exemption from the payment of Income Tax by reason of her personal allowance of £100, and if tax has already been paid by way of deduction, she can claim a refund of tax on the full amount of this income. Her husband will be liable in respect of the balance of the income for the year.

A similar point arises in connection with the income of a widow during the year in which her husband dies, for the reason that up to the date of her husband's death her income forms part of his statutory income, and consequently her statutory income for the year in which her husband dies is represented by the amount she receives between the date of his death and the 5th April succeeding (but see *Leitch v. Emmott* (1929), 2 K.B. 236—Chap. XI, §14.) The husband is entitled to the full year's personal allowance as a married man (£150), both in the year of marriage and in the year of his death.

Similarly, in the year in which the husband dies, allowance for the children of the marriage may be claimed both by the husband and by the widow.

§ 21.—Members of Parliament.

The salary of a Member of Parliament is earned income, and allowance in respect of earned income can be claimed on the net amount after deducting all the expenses of travelling incurred in earning it. In the majority of cases the net income is treated as nil because the expenses claimed exceed the salary.

* Note that the Statutory Income is not necessarily one-twelfth of a year's income. The reason for this apparent anomaly will be explained later.

§ 22.—Non-Resident Taxpayers and Allowances.

The following allowances and reliefs do not apply in the case of any individual who is not resident in the United Kingdom, viz.:— Earned income allowance, age allowance, personal, additional personal, child, housekeeper and dependent relative allowances; reduced rate relief and life assurance relief.

But an individual who satisfies the Commissioners of Inland Revenue that he or she—

- ✓ (a) is a British subject; or
- (b) is a person who is, or has been, employed in the service of the Crown, or in the service of a Missionary Society, or any Native State under the protection of His Majesty; or
- (c) is resident in the Isle of Man or the Channel Islands; or
- (d) has previously resided within the United Kingdom and is resident abroad for the sake of his or her health, or the health of a member of his or her family resident with him or her; or
- (e) is a widow whose late husband was in the service of the Crown,

is entitled to the allowances and reliefs, but in such cases any allowance given must not reduce the Income Tax payable below the amount which bears the same proportion to the tax which would be payable if calculated on the total income from all sources, as the amount of the income subject to United Kingdom Income Tax bears to the amount of the total income from all sources (§ 24—1920 and § 40—1927).

The Commissioners are empowered by § 28 (3) to receive an affidavit giving the particulars required

by the Act and taken before any person who has authority to administer, in the place where the claimant resides, an oath with regard to any matter relating to the public revenue of the United Kingdom.

An appeal from the decision of the Commissioners of Inland Revenue may be made to the Special Commissioners within three months from the date on which notice of their decision is given (§ 20—1926).

Illustration.

A. is a British subject resident abroad. He has an income from all sources of £2,000 of which only one-quarter is subject to United Kingdom Income Tax (by deduction at source).

Assume A. has a wife, two children for whom allowance may be claimed, and one life policy dated 1910, the annual premium upon which is £50. His earned income (earned abroad) is £1,200.

COMPUTATION OF LIABILITY, 1932-33.

Income liable to United Kingdom Tax	£500
Income not liable to United Kingdom Tax—	
Earned £1,200	
Unearned 300	
	<hr/> 1,500
 Total Statutory Income	2,000
Deduct—Earned Income Allowance	240
	<hr/> 1,760
Deduct—Personal Allowance .. £150	
Children „ .. 90	
	<hr/> 240
 Taxable Income	£1,520
Chargeable £175 at 2/6	£21 17 6
1,345 at 5/-	336 5 0
	<hr/> 358 2 6
Less—Life Assurance Relief :—	
£50 at 5/-	12 10 0
	<hr/>
Net Tax to be borne if Total Income	
from all sources were chargeable ..	<u>£345 12 6</u>

Proportion applicable to Income liable in the			
United Kingdom	$\frac{5000}{10000}$ of £345 12s. 6d.	=	£86 8 2
<i>Deduct—Tax deducted at source—</i>			
£500 at 5/-	.. .. .		125 0 0
Income Tax repayable	.. .. .		<u>£38 11 10</u>

It should be observed that income from certain Government securities (*cf.* p. 25) is exempt in the hands of non-residents, and must therefore, in a claim under the above provisions, be included as income not liable to United Kingdom Income Tax.

§ 23.—Due dates for Payment of Income Tax (§ 157).

Except in the case of earned income of individuals or partnerships, the Income Tax in an assessment for any year of assessment is payable on or before the 1st January in that year (or the day after the assessment is signed and allowed, if after 1st January). All limited or unlimited companies and all individuals and firms in respect of unearned income, must therefore pay the tax due under all schedules on 1st January; except in the case of railway companies in England and Northern Ireland, who pay tax, under Schedule D, by four quarterly payments, on or before the twentieth days of June, September, December and March, respectively, in the year of assessment (§ 157 (3)). In the case of the tax upon the earned income of individuals and firms, however, *i.e.*,

Income Tax payable by any individual or firm under—

- (a) Schedule B, in respect of lands occupied for husbandry only;

- ✓ (b) Schedule D, Cases 1 and II (trades, professions and vocations), and other Cases if earned ;
- (c) Schedule A, where allowed to be treated as earned income ;

or by any individual under Schedule E (except those whose Income Tax is deducted at definite intervals of less than half a year, and weekly wage earners assessed half-yearly) is payable in two instalments, the first at 1st January in the year of assessment, and the second at 1st July following the close of the year of assessment (§ 157 (2), § 21—1927, and § 29—1933). Prior to 1931-32, and for 1933-34 onwards (§ 29—1933) these instalments are equal (but for 1931-32 and 1932-33, the first instalment was for three-quarters of the tax due, and the second instalment for the balance (§ 8—1931)).

[Income Tax assessed under Schedule A was also payable by two instalments prior to 1927-28 (§ 157 (2)).]

The Income Tax due from weekly wage earners in respect of the half-year ending 5th October is due on the following 1st January ; that in respect of the half-year ending 5th April, on the following 1st July ; or, in either case, twenty-one days after the date of service of the notice of assessment, if later ; or fourteen days after the determination of an appeal, if later (S. R. & O., No. 702, 1925.)

2 § 24.—The Necessity for Making a Return.

✓ Every person who receives an Income Tax Form is bound to make a return of his total income (§ 100—1918, and § 43—1927). If he fails to do so,

or he makes an untrue or incorrect return he renders himself liable to a penalty of £20 and treble the duty chargeable if sued for before the District Commissioners, or £50 if sued for in any of His Majesty's Courts (§ 107).

The liability to make a return exists in the case of persons having income subject to charge, even when no form of return has been received, since general notices are given by affixing a notice on, or near to the door of the church or chapel and market house or cross (if any) of the parish, and are deemed sufficient notice to all persons resident in the parish (§ 98). It is the duty of such persons to obtain a form and make their returns.

A penalty not exceeding £5 may be imposed for failing to make a return when a form calling for a return is received, even if the person in question proves subsequently that he is not chargeable to duty (§ 100).

The case of a person who does not keep books of account is difficult. It is probably impossible for such person to make a correct return, and consequently, in order that he may comply with the statute, he should state the fact clearly on the return, and estimate his income to the best of his ability. (This line of action places the taxpayer entirely in the hands of the Commissioners, who may assess him at whatever figure they please. He has, of course, an opportunity of appealing; but, as the onus of proof that the assessment is incorrect falls on himself, the absence of proper books of account will prove difficult to overcome. The Commissioners, however, are not usually unreasonable in their demands.

The return forms require the taxpayer to state in each case the income of the preceding year. In Section B is inserted all untaxed income assessable under Schedules D and E, and in Section C the income assessable under Schedules A and B and all taxed income. In Section D must be inserted the annual charges (likewise of the previous year). Spaces are provided for making notes regarding any changes in sources for the year of assessment. (*See Specimen Return in Appendix III.*)

In order to arrive at the statutory total income for 1932-33, it is normally necessary to take Section B of the 1932-33 return (since sources under Schedules D and E are assessable on the preceding year's income) and Sections C and D of the 1933-34 return (since sources under Schedules A and B, income taxed at source, and charges on income, must be taken into account at the amounts for the year of assessment).

The forms issued to individuals also contain sections in which to insert claims for the appropriate allowances.

The return forms are usually issued by the Inspector in April, and must be completed and returned to the Inspector within 21 days.

Where no completed return is received from any person by the Inspector or the Assessor, the latter must make an assessment upon the person chargeable under Schedules A, B and E, in an amount which appears to him to be correct, and estimate the Schedule D assessment for the information of the Commissioners (§ 112—1918, and § 46 and 5th Schedule, 1927).

The assessments under Schedules A, B and E are allowed by the General Commissioners after the

Inspector has examined them. The assessments under Schedule D are considered by the Additional Commissioners before being signed by the General Commissioners.

A banker can be required to render returns of untaxed interest received on Government Securities belonging to customers but registered in the bank's name, *e.g.*, where the bank acts as trustee under a Will or Settlement, where the stock has been taken as security for an overdraft or a guarantee, etc. (*Attorney-General v. National Provincial Bank* (1928), 14 T.C. 111).

§ 25.—Accounts in Support of Return.

Accounts are not necessarily required to support a return, but it is the usual custom, in the case of limited companies, for a request to be made for a copy of the Balance Sheet and Accounts in order to facilitate the making of an assessment, and this information should be immediately supplied.

In the case of private firms, and sole traders it was at one time not so usual to ask for accounts, and even where a request was made it only applied to the Profit and Loss Account; nowadays, however, Balance Sheets are almost invariably asked for in addition. This has been considered unreasonable by many of the public, and by a number of professional accountants; but providing the return which has been made is a correct one, the submission of these documents cannot prove detrimental to the taxpayer. A Balance Sheet is asked for, not, as so many seem to suppose, for the purpose of inquisition into the private affairs of the individual, but in order to see whether there are any

loans upon which interest is payable which have not been declared, to see whether any profits have been placed direct to the credit of capital, and generally to reconcile the taxpayer's income with his capital position.

It must be borne in mind that a trader's Balance Sheet is the only statement which is of any real use to him in ascertaining his financial position, and that a Profit and Loss Account is only a link connecting two Balance Sheets.

In considering the reasonableness of such requests, it must be remembered that it is the duty of the Inland Revenue Authorities to assess the tax as correctly as possible, having regard to the information at their disposal. It is in the public interest that each person should pay what is legally due from him, and unless he has dishonest desires to evade payment of the proper amount, there is no reason why he should refuse to facilitate the duties of the authorities by furnishing them with the information and explanations for which they may ask.

It is true that the Inspector has no legal right to demand or receive accounts, but he can enforce his demand indirectly and effectively, since he can raise an objection to the assessment, and the Commissioners can then demand accounts, to which the Inspector must have access. It is therefore better and wiser to comply with his request for accounts in the first place.

The omission to furnish accounts when called upon to do so is apt to be considered as an admission that the accounts do not support the return that has been made, with the probable result that the assessment will be increased. If, as a fact, the accounts are in

order, an appeal will then be necessary in order to get the assessment reduced, involving additional trouble and expense, which would have been entirely avoided had accounts been furnished in the first instance.

§ 26.—Accounts prepared by Professional Accountants.

The Inland Revenue Authorities prefer that the accounts submitted to them on behalf of taxpayers should be certified by professional accountants. In simple cases it may be unnecessary for the accountant to see the Inspector on the accounts, but if any special points are involved, it is advisable for him to meet the Inspector and discuss the question freely with him. In this way an agreement will often be arrived at in a few moments which will avoid much future trouble.

Inspectors of Taxes are not paid by results, and their object is to get exactly what is legally due from the taxpayer, no more and no less. Theoretically it is not the duty of Inspectors to instruct the public as to their rights in the matter of Income Tax, although more often than not they go out of their way to do so ; but it is undoubtedly their business to see that the taxpayer carries out his duties to the State. In performing this difficult work the representatives of the Inland Revenue are rarely given full credit for the trouble and labour which they often take upon themselves for the direct benefit of individual taxpayers.

An appreciation of these facts by professional accountants, and an adoption by them of a courteous attitude towards the officials, cannot do otherwise than help to maintain and increase that respect with

which the work of professional accountants generally is now regarded by the Income Tax Inspectors. It will be found that the latter, when dealing with difficult cases, will generally give an opinion based on principle, irrespective of result.

The queries asked by Inspectors may at times seem unnecessary and irrelevant. It must be borne in mind, however, that the Inspector often has sources of information not available to the accountant, and the questions are asked in all good faith, and should be answered accordingly.

Practitioners will recognise those few occasions when some very junior official has been indiscreet; in such cases a tactful word to the senior Inspector is much better than an undignified protest.

The General Commissioners are bound to hear on behalf of the appellant any accountant who has been admitted a member of an incorporated society of accountants (§ 137—1918, and § 25—1923).)

§ 27.—Notice of Assessment.

Shortly after an assessment is made, notice is given (normally in the Autumn) to the person assessed, who has the right of appeal if the assessment is not, in his opinion, correct. As soon as the notice is received, the amount of the assessment should be checked with the accounts prepared for the return, in order to ascertain whether it agrees therewith, and whether the proper allowances have been duly made. This precaution is frequently neglected until the actual demand note for the payment of tax is received, when the ordinary period within which an appeal can be allowed will have passed.

§ 28.—Appeal against Assessment.

Notice of appeal must be made in writing to the Inspector within twenty-one days of the date of the assessment notice, the appeal being either to the General or Special Commissioners (§§ 133, *et seq.*). If the assessment was made by the Special Commissioners, the appeal must be made to them (§ 147). It will greatly facilitate the appeal if accounts are lodged.

If dissatisfaction with their decision is expressed at once, *i.e.*, as soon as they have given their decision, and written notice to the clerk to the Commissioners is then given within 21 days, accompanied by a remittance of one pound, the Commissioners may be required to state a case on a point of law, for the opinion of the High Court, and the decision of the High Court is subject to revision by the Court of Appeal and the House of Lords (§ 149).

The Special Commissioners hearing an appeal against an assessment made by themselves may be required to state a case on any point for the opinion of the Commissioners of Inland Revenue, whose decision on a point of fact would be final, but on a point of law a case can be demanded for the opinion of the High Court. Appeals to the Commissioners of Inland Revenue under this provision, it is believed, are never made.

No appeal upon a question of fact can be made from a decision of the Special Commissioners in respect of an assessment made by the General Commissioners; nor is there any appeal against a decision of the General Commissioners on a question of fact, except as regards questions of residence or domicile (§ 27—1924).

Late appeals are allowed where the person concerned has been prevented from giving notice in time by absence, sickness or other reasonable cause (§ 136 (3)). Application in such cases is supposed to be made to the Clerk to the Commissioners, but in practice all such applications are dealt with by the Inspector of Taxes.

In the case of an appeal against an assessment made under Schedule D or according to the Rules applicable to that Schedule, the appellant must in the notice of appeal specify the grounds of the appeal. If, however, on the hearing of the appeal, the appellant desires to go into any ground of appeal which was not specified in the notice and the omission of that ground from the notice was, in the opinion of the Commissioners hearing the appeal, not wilful or unreasonable, those Commissioners are not precluded from allowing the appellant to go into that ground or taking it into their consideration.

Notwithstanding that the hearing of an appeal against any such assessment either—

(a) has been postponed owing to absence or sickness or other reasonable cause under § 126 (3)—1918; or

(b) has been adjourned

beyond the time limited for hearing appeals, the Commissioners must nevertheless proceed to allow and confirm the assessment, but pending the determination of the appeal, the allowance and confirmation of the assessment is to be deemed to be in respect of such amount only of the tax thereby assessed as appears to the Commissioners not to be in dispute, and tax is to be collected and paid in that amount in all

respects as if it were tax charged by an assessment in respect of which no appeal was pending. On the determination of the appeal any balance of tax chargeable in accordance with the determination is payable, or any tax overpaid is repaid (§ 25—1926 ; § 24—1930).

The Inspector of Taxes has no more right to be present when the Commissioners are considering their decision than any other party to an appeal (*R. v. Brixton Income Tax Commissioners and Another* (1913), 6 T.C. 195).

§ 29.—Production of Books and Accounts in Support of Appeal.

The Commissioners cannot compel an appellant to produce Books of Account ; but they can insist upon the submission of schedules of particulars, which practically amount to Balance Sheets and Profit and Loss Accounts. A refusal is certain to prove detrimental to the taxpayer if he wishes to substantiate an appeal against an assessment, as it would be considered *prima facie* evidence of the correctness of the assessment.

Even in cases where accounts are put forward in support of a reduction of an assessment, the Commissioners are within their rights in disregarding altogether such accounts (*Wall v. Cooper* (1929), 14 T.C. 552), and in such a case the production of the books becomes imperative if the appellant's contention is to be substantiated.

If the Commissioners are not satisfied on the evidence tendered that an assessment is excessive, it is within

their powers to ask that accounts audited by a qualified auditor be produced as an alternative to immediate confirmation of the assessment (*Hart & Co. v. Joby* (1928), 14 T.C. 165).

§ 30.—Additional Assessments.

If the Inspector discovers (*i.e.*, has reason to believe) that any properties or profits chargeable to tax have been omitted from the first assessments, or that a person chargeable has not delivered any statement, or has not delivered a full and proper statement, or has not been assessed, or has been under-assessed in the first assessments, or has obtained allowances or reliefs to which he is not entitled, he may amend any assessment under Schedules A, B and E which has not been signed and allowed. If the assessment has been signed and allowed, he must certify the particulars to the General Commissioners, who must sign and allow an additional first assessment.

In the case of Schedule D, the additional assessment must be made by the Additional Commissioners.

An assessment may be amended, or an additional first assessment be made at any time not later than six years after the end of the year to which the assessment relates, or the year for which the person liable to Income Tax ought to have been charged (§ 125—1918, and § 29—1923).

In the case of a deceased person, however, the time allowed is not to extend beyond the end of the third year next following the year of assessment in which the deceased person dies, *i.e.*, the assessments must be made within such three years, but may be in respect of any of the preceding six years in regard to which an assessment can be made (§ 29 (3)—1923).

It should be noted that the above provisions do not give the taxpayer any right to have an assessment amended. If he does not appeal within 21 days from the date of the notice, the assessment becomes binding.

If the taxpayer can show that an assessment under Schedule D was excessive by reason of some error or mistake in the return or statement made by him for the purposes of the assessment, he may, at any time not later than six years after the year of assessment within which the assessment was made, make application in writing to the Commissioners of Inland Revenue for relief. An appeal lies from their decision to the Special Commissioners (§ 24—1923, and § 27—1926). (The error or mistake must be in the return or statement (*e.g.*, accounts); an error in the basis of assessment through the application of a practice then prevailing is not a ground for relief, even if the Courts have subsequently decided that that practice was wrong. This section is reproduced in Chap. IV, § 16.

CHAPTER III.

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The Five Schedules.

§ 1 —SCHEDULE A.

2 —SCHEDULE B.

3.—SCHEDULE C.

4 —SCHEDULE D.

5 —SCHEDULE E

6 —WEEKLY WAGE EARNERS.

CHAPTER III.

THE FIVE SCHEDULES.

§ 1.—Schedule A.

Tax under Schedule A is levied upon the net annual value of lands, tenements, hereditaments, and heritages in the United Kingdom. The tax is popularly known as the Landlord's Property Tax, but it should be remembered that the same rules as regards allowances and deductions apply in the case of income taxable under Schedule A, as in the case of income taxable under any other Schedule.

The gross assessment (the "gross annual value") is based on the full "rack rent" which the property would command in the open market if let on an ordinary yearly tenancy, the rent being the sole consideration for the demise, the tenant paying the usual tenant's outgoings (*e.g.*, parochial and water rates), and the landlord bearing the cost of repairs, insurance, etc.

Where the property is let at a rack rent and the amount thereof has been fixed by agreement commencing within the seven years preceding 5th April next before the time of making the assessment, that amount must be taken as the gross annual value, otherwise it must be estimated (Sch. A. No. I Rules), by reference to the value of similar properties in the vicinity, rating valuations, etc. (Nos. I and IV, Rules of Schedule A, 1918, and § 28—1930). In arriving

at the true rack rent, adjustment must be made for any landlord's burdens borne by the tenant, or tenant's burdens borne by the landlord.

Since the gross annual value is fixed on the basis of the landlord bearing the cost of repairs, it is only reasonable that a deduction should be allowed from the gross annual value in respect of such repairs. Accordingly a statutory repairs allowance has been provided for in Rule 7 of No. V, Schedule A, as amended by § 28—1923, § 20—1928, and § 30—1933. This allowance was formerly a sum not exceeding one-sixth of the gross annual value, but by the Finance Acts, 1923, 1928 and 1933, the rules of Schedule A have been altered increasing the allowance for a period of thirteen years from 5th April, 1923, so that the deductions in the case of the assessment upon any house or building (except a farmhouse or building included with lands in assessment) are at present as follows :—

Gross value not exceeding £40	..	One-fourth of the gross assessment.
Gross value exceeding £40 and not exceeding £50	.. .. .	£10
Gross value exceeding £50 and not exceeding £100	.. .. .	One-fifth of the gross assessment.
Exceeding £100	.. .. .	£20, plus one-sixth of the amount by which the gross assessment exceeds £100.

The statutory allowance for repairs, etc., in the case of lands (inclusive of the farmhouse if let with the land and other buildings, if any), is one-eighth of the gross assessment.

The sum remaining after deducting the repairs allowance, tithes, land tax[†] on the property, and certain other amounts provided by Rule 1, No. V, is known

as the "net annual value," and it is on that sum that Income Tax is levied.

Thus the assessment upon a house rented at £39 per annum, where the landlord pays the rates, would be arrived at as follows :—

Illustration.

	£	s.	d.
Annual Rent	39	0	0
Less Rates paid by Landlord (say) ..	14	0	0
Gross Annual Value for Income Tax, Sch. A	25	0	0
Less Statutory Allowance for Repairs, $\frac{1}{4}$ th	6	5	0
Net Annual Value ..	£18	15	0

Where the property is let at a rack rent and the tenant pays the local rates, the assessment is based on the actual amount of rent paid, less the statutory allowance for repairs.

Illustration.

	£	s.	d.
Annual Rent	30	0	0
Less Statutory Allowance for Repairs, $\frac{1}{4}$ th	7	10	0
Net Annual Value	£22	10	0

Where the tenant is 'bound under a lease' to keep the property in repair, the repairs allowance is such a sum, not exceeding the scale deduction, as will reduce the assessment to the rent payable.

Illustration.

A. is the occupier of a house of which the gross annual value is £184. Under the lease, the annual rental is £160 and A. is responsible for all repairs.

The Statutory Allowance for Repairs would be £20 + $\frac{1}{6}$ th $(184 - 100) = £34$, but this will be restricted under the above rule to £24, making the net annual value £160, equal to the rent.

If, in this case, the rent had been £140, then the net annual value would have been $(£184 - 34) = £150$.

Where the property is let at an annual rental which exceeds the gross annual value by an amount exceeding the statutory allowance for repairs applicable to an assessment upon an amount equal to that rent (after deducting from that rent any permissible outgoings), then no repairs allowance is granted (Sch. A, No. V, Rule 7 (2)), and the gross annual value is taken as the net annual value.

Illustration.

B is the occupier of a building assessed at a gross annual value of £200, for which he pays a rent of £250.

Since the repairs allowance appropriate to £250 is $£20 + \frac{1}{4}(250 - 100) = £45$, and $£250 - £45 = £205$, which is a sum in excess of the gross annual value, no repairs allowance is granted, and £200 is regarded as both the gross and the net annual value.

In such a case, the authorities admit a maintenance claim (see p. 80) where the average repairs, etc., exceed the amount by which the rent exceeds the gross annual value.

The annual value in these cases depends upon the length of the lease, the conditions of the lease, etc.

The gross valuation may include the annual sum necessary to replace a premium paid for a lease, with interest, in addition to the rent payable (*Davies v. Abbott* (1926), 11 T.C. 575).

The assessments under Schedule A are to be made every five years (§ 27—1930), and when once made and passed by the Commissioners, cannot be increased during the five years unless (i) properties have been omitted; or a person chargeable has not delivered any statement or a full or proper statement, or has not been assessed, or has been undercharged in the

first assessment; or he has been allowed or has obtained any unauthorised deduction, etc., owing to inadequate information at the time of assessment (§ 125—1918, and Second Schedule, para. 4—1922); or (ii) there has been any real change in the property itself, *e.g.*, structural alterations (*Turner v. Carlton* (1909), 5 T.C. 395).

On the other hand, if the property depreciates in rental value the taxpayer may appeal for a reduction in the assessment in any year (§ 26—1923; § 28—1930).

A year of assessment for which a revaluation of properties is directed to be made is known as “a year of revaluation,” and the year preceding it is known as a “preparatory year” (§ 27—1930).

Prior to 1930-31, no revaluation had been made since 1922-23, but in 1930-31 a revaluation was made for the year of revaluation 1931-32. If the annual value for a year of revaluation can be shown to be less than the annual value on which the assessment was based, the taxpayer can appeal for a reduction to the lower value (§ 28—1930).

In the preparatory year the assessors of each district issue to the occupier of each house forms calling for particulars of the rent paid, and other necessary information.

Within the Administrative County of London the gross annual value was fixed by the valuation list made under the Valuation (Metropolis) Act, 1869, for all years prior to 1931-32, but for 1931-32 onwards this exception ceases (§ 31—1930).

The assessments in the case of farm property are arrived at in much the same way, any tithe payable being taken into consideration. It should be noted,

however, that the statutory allowance for repairs in the case of agricultural property is only one-eighth, as against the varying statutory allowance in the case of house property. The obvious reason for this difference is that house property requires more constant repair than farm property.

The assessments under Schedule A are made to include the tithe rent charge, unless the owner of the rent charge has claimed and been allowed to be separately assessed thereon. Where the tithe is so separately assessed however, the repairs deduction is calculated on the original gross assessment.

The following illustration shows the basis upon which assessments are made in the case of farm property (containing no farm cottages) let under normal conditions :—

Illustration.

	£	s.	d.
Gross Annual Value (Rack rent) .. .	240	0	0
Less Tithe paid by Owner on Separate Assessment	24	0	0
New Gross Assessment	216	0	0
Less Statutory Allowance for Repairs, 1 th of £240	30	0	0
Net Annual Value	£186	0	0

Where the farmhouse is let separately from the land, or is occupied by the owner, it is not included with the land, but treated for the purposes of the statutory allowance for repairs as a building in the ordinary way, and is therefore subject to the scale allowance for repairs, and not the allowance of one-eighth applicable to land.

The statutory allowance for repairs is in general presumed to cover all expenses in connection with the upkeep of the property and the getting in of the annual income from the property; consequently, no further charges can be made against the net assessment; *e.g.*, where a person owning house property employs an agent to collect the rent, the charges of that agent would be deemed to be covered by the statutory deduction. In Scotland, however, owner's rates are deductible in addition to the authorised deduction based on the gross annual value (Rule 4, No. V, Sch. A). The result is that the net annual value usually varies from year to year.

Maintenance Claim.

Rule 8, Schedule A, No. V (as amended by § 32—1920, § 25—1922, § 28—1923, and § 25—1924), however, provides for an extension of the repairs allowance, whereby the taxpayer, on proving to the satisfaction of the Inspector that his expenditure for the year of claim in connection with the property, for maintenance, repairs, insurance and management, according to the average of the preceding five years, has exceeded the statutory allowance, can make a claim for repayment of tax on the excess.

The year of expenditure can be taken to 31st March or 31st December or any regular fixed date.

It should be noted that this additional relief will usually take the form of repayment of tax. The allowance will be certified by the Inspector, if he is satisfied as to the correctness of the declaration made by the owner, and repayment will thereupon be made in accordance with his certificate.

For the purposes of this relief the term "maintenance" includes the replacement of farm houses, farm buildings, cottages, fences, and other works where the replacement is *necessary to maintain the existing rent*; and additions or improvements thereto made in compliance with Statutes or bye-laws of a Local Authority where no increased rent is payable. In comparing the cost of maintenance, repairs, insurance and management of any land or houses with the statutory allowance for repairs, etc, in respect of the land or houses, the total cost of the maintenance, repairs, insurance, and management of any land managed as one estate, or of any houses on any such land, must be compared with the total statutory allowances in respect of the land or houses, as the case may be; separate claims for each property will not be allowed.

In the case of a claimant not having had the property for five years, his repairs must be averaged with those of the previous owner. Where the latter figures are not available, however, then (by concession) the Revenue Authorities permit claims to be made on the basis of the actual expenditure of each year until the five years' average is available. No repayment is allowed where the repairs have been allowed as a deduction from profits under Schedule B, Rule 6, or Schedule D.

Any such claim for repayment will operate to reduce the statutory income of the taxpayer for that year for the purpose of any allowances or deductions and for sur-tax.

If the excess cost of maintenance is greater than the Net Annual Value, the claimant cannot claim repayment on any sum in excess of that Net Annual Value (*Crompton v. Campbell* (1924), 9 T.C. 224).

Illustration.

Gross Assessment on House, 1933-34	£80
Statutory Repairs Allowance $\frac{1}{5}$ th	16
Net Annual Value	<u>£64</u>
Actual Expenditure on Repairs, Insurance of Building and Rent Collection :—	
Year ended 31st March, 1929	£24
do. 1930	8
do. 1931	18
do. 1932	12
do. 1933	43
	<u>£105</u>
Average, one-fifth of £105 =	£21
Allowance, as above	<u>16</u>
✓Additional Allowance due	£5

The taxpayer therefore reclaims* tax on £5, and his Statutory Income from the house for all purposes for 1933-34 becomes £80 - £21 = £59.

Rule 9 of No. V allows for an abatement of the assessment where a loss has been suffered by flood or tempest (*see* p. 90.)

Where a person occupies his own house, the net annual value thereof is regarded as his statutory income, and in any claim which such taxpayer may make for allowances or deductions, this property will have to be included as forming part of his total statutory income from all sources.

The tax under Schedule A is, in the majority of cases, collected at the source, *i.e.*, from the occupier (Rule 1, No. VII), who reimburses himself by deducting the tax which he has paid from the next succeeding payment of rent (Rule 1, No. VIII, and § 26, 1926). The landlord is bound under a penalty of £50 to allow this deduction upon the production of the official

receipt, and any agreement made between the landlord and the tenant, or any clause inserted in the lease, whereby the tenant agrees to forego his rights in this matter, is void (Rule 23, General Rules, 1918, and § 26—1926). Every person having the use of any lands or tenements is deemed to be the occupier thereof (Rule 2, No. VII).

If the tax paid by the tenant is not deducted from the next payment of rent it can be deducted only from any subsequent payment on account of arrears (*re Sturmev Motors* (1913), 1 Ch. 16).

If no rent is payable for any year, the tax in respect of that year cannot be deducted from the rent of the following year (*Moore v. Drughorn* (1922), 2 K.B. 492).

The tenant cannot deduct more Income Tax than an amount calculated at the standard rate in force during the period of accrual on the rent which he actually pays, even though the net assessment under Schedule A exceeds this amount (Rule 1, No. VIII).

Illustration.

X. lets his house to his son Y. at a rent of £20 per annum. The net annual value of the house is £100, and the tax under Schedule A at 5s. amounts to £25

Y. cannot therefore legally deduct more than £5 from the next succeeding quarter's rent payable to his father, in spite of the fact that he has paid £25 Income Tax in respect of the property, the argument being that he enjoys the use of property valued far in excess of what he gives for it, and therefore it is only fair he should himself bear that proportion of tax which relates to his "beneficial ownership" The excess of the net annual value over the rent paid, *viz.*, £80, must be included in Y.'s computation of total income, and personal and other allowances may be claimed against it to the extent that these are not absorbed by other income.

An occupier who quits occupation remains liable for the tax payable in respect of the period up to the

date of his quitting occupation so far as such tax falls ultimately to be borne by him, but there cannot be levied upon an occupier tax which ought to have been levied upon and *ultimately borne* by any former occupier (Rule 3, No. VII), *i.e.*, where that occupier was the owner.

An occupier who has been required to pay and has paid any tax which ought to have been paid by a former tenant or occupier, may deduct and retain out of *any* subsequent payment of rent to his landlord the sum or any part thereof which ought to have been or ought to be so paid (Rule 7, Schedule A, No. VIII).

If the owner of any lands, etc., occupied by him at the time an assessment for any year under Schedule A was made, dies before payment of the tax, the heirs, executors, administrators or assigns, or other persons who become entitled on his death to the rents or profits thereof, are liable to pay all arrears due at the time of the death, or, if no arrears are due, the tax payable for the period up to the time of the death, together with, in either case, the tax payable for the remainder of that year, according to their respective interests, without any new assessment (§ 161 (3)).

The tax is assessable upon the landlord direct, and not collected in the first instance from any one of the tenants in the following cases:—(a) weekly property and tenement buildings; (b) dwelling houses where the annual value is less than £10, and (c) lands and buildings let for a period of less than one year. In either case, however, in default of payment by the landlord, the tax may be levied upon the occupier or occupiers respectively (Rule 8, Schedule A, No. VII).

who may deduct the tax from the next or *any* subsequent payment of rent (Rules 8 and 9, Schedule A, No. VIII).

The Commissioners may, upon the written request of the landlord, make the assessment direct upon him, and not upon the occupier, but this request must be made not later than 31st July in any particular year (Rule 9, Schedule A, No. VII). Where the tax is not paid, however, the Commissioners have the right to collect the tax from the occupier, in which case he may deduct the amount paid from the next or *any* subsequent payment of rent (Rule 10, Schedule A, No. VIII).

The landlord or person immediately entitled to the rent is chargeable in respect of any house occupied by the accredited Minister of any foreign state (Rule 10, Sch. A, No. VII).

Income Tax under Schedule A is not leviable on any house which is unoccupied (the furniture must have been removed) for the year of assessment, or in respect of a portion of the year during which it is unoccupied (Rule 4, Sch. A, No. VII). Consequently any assessment made can, upon appeal, be discharged or diminished by the Commissioners, on due proof of the time during which the house remained unoccupied. Relief is also given in respect of unoccupied tenements in houses let in different tenements (§ 21—1930).

Moreover, by concession, the relief is extended to shops, and to rent which is proved to be irrecoverable, lost, remitted or reduced.

The amount to be included in the total statutory income of the landlord is the net annual value, or the rent received from property let, if this is

lower; e.g., if A. has three houses, each of a net annual value of £120, one of which he occupies, the other two being let at £140 and £80 respectively, the sums to be included in his total statutory income are £120 for the house occupied, £120 for the house let at £140, and £80 for the house let at £80.

Where a person occupies a house rent free, and the annual value of such house can be proved to form part of the emoluments of office or employment of profit (*see* Chap. III, § 5), the net annual value of the property can be regarded as earned income.

Land round the house, not exceeding one acre, is included in the assessment on the house.

Sporting Rights.

Where the land and sporting rights are let separately, the sporting rights are assessed separately, but where they are let together, or are both owned and occupied, or the land is occupied and the sporting rights let, they are assessed together, the value of the sporting rights being taken into account in computing the annual value. In those cases where the land is let, but the sporting rights retained, no assessment is made on the latter, presumably in view of the cost of maintaining the value of the sporting.

§ 2.—Schedule B.

Tax under Schedule B is levied upon all lands, including farm lands and buildings, hop gardens, etc., but excluding dwelling houses with not more than one acre of garden (other than farm houses *rented* with the land entirely for farming purposes) and business premises. The assessment is based upon the gross

annual value, and represents the profits derived from the occupation of the property. In the case of lands not wholly or mainly occupied for the purpose of husbandry, the assessment is upon one-third of the gross annual value, unless the Ministry of Agriculture, on a reference to them by the Commissioners of Inland Revenue, certify that the use of the land for a purpose other than husbandry is unreasonable. In the case of nurseries and market gardens, the assessment is under Schedule B, but is estimated according to the rules of Schedule D (Rule 8, Schedule B).

It will be seen that the assessment (except as regards nurseries and market gardens) is based on a purely hypothetical income, and has no direct connection with the actual profits which the occupier of the property may make in the course of the year. Thus, where the gross annual value of a farm is £300, this amount is regarded as the profit of the occupier of the farm and constitutes his statutory income derived from the occupation of the farm (§ 23—1922).

Where a person both owns and occupies a farm he will pay Income Tax thereon under both Schedules A and B. He will pay tax under Schedule A on the *net* annual value in respect of the hypothetical income from the ownership of the farm, and under Schedule B on the *gross* annual value in respect of the profits derived from working the farm.

The farmhouse is included with the land where occupied by a tenant farmer, but is assessed separately under Schedule A if occupied by the owner.

The Schedule B assessment is on the gross annual value before deducting any tithe rent charge, even if the latter is separately assessed. The value of

sporting rights is included unless separately let or retained by the owner who lets the land.

The assessments under Schedule B are made at the same time as those under Schedule A (now every five years), and the rules applicable thereto are similar to those in respect of Schedule A. Consequently, where the rent is increased during the five years, the Schedule B assessment cannot be increased until the next revaluation, unless any material improvement has been made in the way of farm buildings, or the acreage of the farm extended. If, however, the rent is lowered during the five years, application should be made for a reduction in the assessment.

CLAIMS FOR ADJUSTMENT OF SCHEDULE B. ASSESSMENTS.

The statutory income of the occupier of a farm is taken to be the gross annual value thereof; but if it can be proved that the actual profits from working the farm are less in amount than the statutory assessment, the lower figure can be taken to represent the statutory income for the year in respect of the profits arising from the farm; and if tax has already been paid in full, a claim for refund of tax can be made in respect of the amount overpaid (Rule 6, Schedule B).

Notice of appeal under this section must be given within 12 months after the expiration of the year to which it relates (§ 30—1923).

A farmer or other person occupying land for the purpose of husbandry is given the option of being assessed under Schedule D instead of under Schedule B. His election to be so assessed must be signified by notice in writing, delivered personally or by registered

letter to the Inspector of Taxes, within two months after the commencement of the year of assessment; in the absence of such notice the assessment will be made under Schedule B (Rule 5, Sch. B). Fresh notice of a claim must be given each year, since the notice operates for the year of election only.

It should be noted that where farmers elect to be assessed under Schedule D, their profits are computed on the basis of assessment under that Schedule, *i.e.*, on the profits of the preceding year. (Accounts in support of the return will invariably be required.) In cases where the assessment is made under Schedule B, accounts are unnecessary except to support a claim under Rule 6, or under § 34, Income Tax Act, 1918, where a loss is made. The taxpayer should ascertain under which Schedule it is more advantageous for him to be assessed, and elect accordingly.

It should be noted that for any year in which the farmer has elected to be assessed under Schedule D he cannot make a claim under Rule 6 for the same year.

Illustration.

A farmer is assessed under Schedule B at £400. His actual profits as shown by adjusted accounts are as follows :—

Year ended 31st March, 1931	..	..	£200
do. 1932	..	..	700
do. 1933	..	..	300

In 1930-31, he could claim (notice to be given not later than 5th April, 1932) to have the Schedule B assessment reduced under Rule 6 to £200.

In 1931-32, he could claim (notice to be given not later than 5th June, 1931) to be assessed under Schedule D on the preceding year's profit of £200.

In 1932-33, he would be unlikely to claim to be assessed under Schedule D, but could again make use of Rule 6 to have the Schedule B assessment reduced to £300.

An important relief is granted to the occupiers of agricultural land, where owing to floods the whole or a portion of the lands are rendered unfit for cultivation, or where loss has been sustained to growing crops, etc. In such cases application can be made to the Commissioners, who on satisfactory proof that the owner has abated any portion of the rent, may reduce the assessments under Schedules A and B accordingly (Rule 9, Sch. A, V ; Rule 3, Sch. B).

Any person occupying woodlands who proves to the satisfaction of the General or Special Commissioners that they are managed on a commercial basis and with a view to the realisation of profit, may elect to be assessed under Schedule D instead of under Schedule B. Any such election, however, must extend to all woodlands so managed on the same estate, but woodlands planted or replanted since 19th July, 1916, may be treated as being woodlands on a separate estate if the occupier gives notice accordingly to the Commissioners within ten years (§ 23 (2)—1922) after the planting or replanting. Any election to be assessed under Schedule D must have effect not only for the year of assessment but for all future years as well, unless a change in occupier takes place (Rule 7, Schedule B).

Where a farmer in any year sustains a loss he is entitled (in addition to his rights under Rule 6), upon giving notice in writing to the Inspector of Taxes within one year after the year of assessment, to apply to the General Commissioners for a repayment of tax on the amount of the loss under § 34 (§ 34—1918 and § 30—1923) (*see* Chap. VII, § 2).

Where a farmer has elected to be assessed under Schedule D in accordance with Rule 5 or Rule 7 of

Schedule B, and has suffered a loss in respect of which relief has not been wholly given under § 34 or Rule 13 of Cases I and II or otherwise, he can carry forward the loss in respect of which he has not had relief, for deduction from or set off against any profits from the farm or woodlands assessable under Schedule D, during the succeeding six years. If, however, the farmer ceases to be assessable under Schedule D by reason of his not continuing to elect to be so assessed, no further deduction or set off in respect of the loss sustained can be claimed (§ 33 (4)—1926) (*see* Chap. VII, § 2).

As to the profits of cattle dealers and milk sellers in excess of the Schedule B assessment, where the Commissioners consider that that assessment affords no just estimate of the profits, *see* Schedule D, Case III (*see* Chap. V, § 1).

It is important to note that, although the ordinary Schedule B assessment is presumed to cover the whole of the normal farming operations, a claim can still be made under § 36 for repayment in respect of interest paid to a banker, etc. (*see* Chap. IX, § 8).

“ ‘ Husbandry ’ is a term of very wide signification the question whether a man is engaged in husbandry is very much a question of fact and of degree ” (Sankey, J., in *C.I.R. v. Ramsom & Son* (1918), 2 K.B. 709). “ Lands are occupied for husbandry if the trade or business carried on by the occupier depends to a material extent on the use of the fruits of the lands ” (Clyde, L.P., in *Lean v. Bull* (1926), S.C. 15). Poultry farming was held to be husbandry (*Lean v. Bull, supra*). In *Back v. Daniels* ((1924),

9 T.C. 183), a firm of wholesale potato merchants, who grew some of their produce on lands hired from farmers for seasonal periods, where they provided the seed, some manure, and the labour for planting and lifting the potatoes, but the farmer ploughed and cultivated the land and carted the potatoes (paying rent, rates and taxes), it was held that the firm had the use of the land, and were assessable under Schedule B and not under Schedule D in respect of their profits therefrom.

Sheep grazing is just as much husbandry as tillage or cultivation of the soil (*Keir v. Gillespie* (1919), 7 T.C. 473). Where, however, additional land is rented on what is known as the "eleven months" system, the graziers may be assessed under Schedule D, Case VI (*McKenna v. Herlihy* (1920), 7 T.C. 620). The owner is, of course, assessable under Schedule B in such a case. The Schedule B assessment does not cover profits arising from things done outside the farm (*Donald v. Thomson* (1922), 8 T.C. 272), unless the arrangement is an ordinary incident in the conduct of the business as a farmer, *e.g.*, the Schedule B assessment covers the profit made on sheep which were, according to the custom of the district, wintered on lands in less exposed districts (*C.I.R. v. Marshall and Mitchell* (1928), 14 T.C. 341).

Where lands are occupied exclusively for the purpose of breeding racing stock, the occupation for this purpose falls within the scope of Schedule B. The use of stallions, whether for serving the mares of the occupier or outsiders, is an ordinary part of the activities of a breeding establishment, and the fees received for the services of stallions *on the lands* are covered by the assessments under Schedule B.

If, however, the lands are occupied as an ordinary farm (even if breeding is an incident of the farming), and the services of the stallion are employed *outside* the lands, *e.g.*, where it is let out and taken round the country, the fees are assessable under Schedule D, Case VI (*Glanely v. Wightman* (1933), 12 A.T.C. 209).

§ 3.—Schedule C.

Tax under Schedule C is levied in respect of all profits arising from interest, annuities, dividends and shares of annuities, payable to any person, body politic or corporate, company or society, out of any public revenue. This includes interest and dividends payable out of public funds of the United Kingdom, Dominions and British Possessions, or any foreign state, where the payment of interest is entrusted to an agent resident in the United Kingdom. Where interest on such securities is paid gross, the income is assessable under Case III, Schedule D.

The Act does not define “public revenue,” but tax under Schedule C is levied only upon interest, etc., payable out of the revenues of a State, and not upon interest upon municipal loans.

(The basis of assessment is the actual profit arising during the year of assessment.)

The tax in respect of profits taxable under Schedule C is collected at the source, and those persons who are entrusted with the payment of the profits are required to retain the tax before paying the interest or dividend, and to pay such tax into the general account of the Commissioners of Inland Revenue at the Bank of England.

The Governor and Directors of the Bank of England are Commissioners for the purpose of assessing their own profits, and also in respect of dividends, interest, annuities, etc., payable out of the public funds, which are entrusted to them for payment.

It should be noted that where the half-yearly amount of any dividend payable out of the public funds does not exceed 50s., and where such dividends are not payable upon coupons annexed to stock certificates payable to bearer, the amount is paid gross, and the tax not deducted (Rule 9, Sch. C, Group 2), except in the case of 4% Victory Bonds.

Where certain Government Stocks are held through the Post Office, special rules are in force. Tax is not deducted where the aggregate holding of all Stocks does not exceed £500 in the case of 2½% Consols, 2½% and 2¾% Annuities, 3% Local Loans, and 2¾% and 3% Guaranteed Stocks; and in no case is tax deducted from 4% Funding Loan, 4% Victory Bonds, Treasury Bonds, 4% Consols, and 3½%, 4% and 4½% Conversion Stock.

The reason for this is to save small holders, who are likely to have incomes not sufficient to render them liable to the payment of Income Tax, being put to the trouble of reclaiming the tax. If tax is payable, however, such dividends must be returned by the stockholder as income assessable under Case III, Schedule D (Rule 9, Schedule C, Group 2), the basis of assessment being the amount received during the preceding fiscal year.

Interest, dividends, etc., payable out of the revenue of foreign states, which are not entrusted for payment to any agent resident in the United Kingdom,

are not taxed under Schedule C, but the recipients are called upon to declare such profits in their Income Tax returns under Case IV of Schedule D.

Under Schedule C, the rate of tax is determined by the date of payment, and not by the rate or rates in force during the time the interest accrued (§ 39—1927). Thus, if the interest was payable on 1st May, 1930, the rate of tax to be deducted was 4s. 6d. in the £, in spite of the fact that part of such interest accrued during a period when the rate was 4s. 0d. in the £.

From the view point of the recipient of income taxed under Schedule C, the only importance attaching to it is the fact that the income has been taxed at source, and the gross amount thereof must be included in the return of total income, credit for the tax paid being taken in arriving at the amount of tax remaining to be paid or reclaimed.

In the case of the 3½% War Stock and certain other Government Securities now redeemed (*e.g.*, 5% War Loan, Exchequer Bonds, 5% National War Bonds, etc.), the interest (except on bearer bonds) is paid gross without deduction of tax (§ 49—1918; § 23—(No. 2) 1931), unless an application to have the interest paid less tax has been made in accordance with the provisions of § 27, Finance Act, 1921. The recipient is assessable in respect of such interest under Case III, Schedule D, on the basis of the amount received in the preceding fiscal year (§ 49).

Persons not ordinarily resident in the United Kingdom are exempted from tax in respect of their holdings of 3½% War Stock, 4% Funding Loan, 1961-90, and 4% Victory Bonds (§ 46—1918).

Where interest on Government Loans was payable "tax compounded," i.e., exempt from Income Tax but not free of super-tax, the interest, for the purposes of super-tax or sur-tax and for the purposes of any relief from Income Tax which depends on the total income from all sources, had to be treated as part of the total income from all sources, as if the amount received represented net income after deduction of Income Tax at the standard rate. But no right of repayment of Income Tax could in any case arise in respect of such interest (§ 48).

The Income Tax Compounded 4% War Loan 1929-1942, and 4% National War Bonds were the only examples of tax compounded loans and have all been redeemed. It has been thought advisable to refer to them here, however, as computations for past years may require a knowledge of these rules. National Savings Certificates are exempt from Income Tax and super-tax or sur-tax (§ 47), so long as the holder does not hold more than the maximum number of certificates authorised by the Treasury, i.e., no individual may hold more than 500 such certificates in his own name.

§ 4.—Schedule D.

(a) Income Taxable under Schedule D.

The Tax payable under Schedule D is in respect of—

- (a) The annual profits or gains arising or accruing to any person residing in the United Kingdom—
 - (i) From any kind of property whatever, whether situate in the United Kingdom or elsewhere; or
 - (ii) From any trade, profession, or vocation (other than an office, employment or pension),

whether the same is carried on in the United Kingdom or elsewhere.

- (b) The annual profits or gains arising or accruing to any person whatever, whether a British subject or not, although not resident within the United Kingdom, from any property whatever in the United Kingdom, or from any trade, etc., exercised within the United Kingdom.
- (c) All interest of money, annuities and other annual profits or gains not charged by virtue of any of the other Schedules and not specially exempted from tax.

(b) The Six Cases.

The rules of assessment and charge under Schedule D, are comprised in Six Cases, as follows :—

Case I.

Case I extends to every trade carried on in the United Kingdom or elsewhere (including trades relating to lands, tenements, etc., which, prior to 1927-28, were chargeable under Schedule A, No. III, *i.e.*, gasworks, waterworks, mines, etc.).

This is the principal Case under which businesses controlled in the United Kingdom are assessed, and the various rules thereunder will be referred to as occasion arises.

Case II.

Case II extends to every profession and vocation carried on in the United Kingdom. (Prior to the year 1922-23, employments (other than of a public character) were assessable under this Case, but all employments are now chargeable under Schedule E.)

Assessments under Cases I and II are made on the basis of the profits of the trading year ending within the previous year. (Prior to 1927-28 the assessment was on a fair and just average of the three preceding years.)

Case III.

Case III applies to profits of 'an uncertain' annual value³ not chargeable under Schedule C (including tithes, etc., which, prior to 1927-28, were chargeable under Schedule A, No. II).

The tax in this Case is charged on the full amount of the profits or gains arising therefrom within the preceding year, without any deduction.

Case IV.

Case IV applies to interest arising from securities⁴ in any place outside the United Kingdom, except such as are charged under Schedule C.

The tax in this Case is charged on the same basis as Case III, except in respect of persons not domiciled, and British subjects not ordinarily resident in the United Kingdom. Special Rules apply to income arising in the Irish Free State (*see* Chap X, § 21).

Case V.

Case V applies to income from stocks, shares or rents, and from other possessions outside the United Kingdom.

The income from stocks, shares and rents is assessed similarly to Case IV; that from other possessions is assessed upon the amounts remitted⁵ to the United Kingdom in the preceding year (*see* Chap. V, § 2 (e)). Special Rules apply to income arising in the Irish Free State (*see* Chap. X, § 21).

Where this Case applies the person to be charged may be assessed by Commissioners acting for any parish or place in which he ordinarily resides (Rule 4 (4), Schedule D, Miscellaneous).

Case VI.

Case VI applies to annual profits or gains not falling under the other Cases of Schedule D, and not charged by virtue of any other Schedule; and the grounds on which the amount has been computed and the average taken (if any) must be stated to the Commissioners.

The computation is made either on the full amount of the profits and gains received annually (*i.e.*, the actual profits for the year of assessment) or according to an average of such period of not more than one year, as the case may require, and as directed by the Commissioners (§ 29—1926).

Every such statement and computation is to be made to the best of the knowledge and belief of the person in receipt of the income or entitled thereto.

The rules applicable to Case VI apply where a business is commenced during the year of assessment, though it is assessed under Case I. Case VI also applies to direct assessments of tax insufficiently deducted from certain interest, etc., owing to the payment having been made before the rate of tax for the year was known (§ 211) (*see* Chap. IV, § 13).

(c) Mode of Assessment under Schedule D.

Persons assessable to Income Tax under Schedule D may elect to be assessed either by the Commissioners of their district, or by the Special Commissioners of

Income Tax. In the former case, if a taxpayer undertakes to pay the tax assessed within the time limited, he can elect to be dealt with under a number or letter only (§ 156). This has the advantage that the local collector has no knowledge of his affairs, as the procedure is for a certificate to be given by the Commissioners to the taxpayer certifying the amount payable, without in any way describing the person assessed, and the tax must then be duly remitted to the Accountant-General of Inland Revenue direct.

Where the taxpayer elects to be assessed by the Special Commissioners, the return must be sent to the Inspector of Taxes within the time stated on the form, and the space provided for making the election (*see* Appendix III, specimen form) be completed with the words "Special Commissioners." This method has the advantage that the taxpayer's affairs do not come before the District Commissioners, the Collector or other local persons.

§ 5.—Schedule E.

Tax under Schedule E is levied in respect of every office or employment of profit or pension, and upon every annuity, pension or stipend payable by the Crown or out of the public revenue of the United Kingdom, except annuities chargeable to duty under Schedule C.

Assessments are made under this Schedule on the following, among others : All employees, Government officials, officials of the Law Courts, Army and Navy officers, and officers of any ecclesiastical body, public corporation, public foundation, limited company, or society.

A pension or annual payment to a former employee, or to his widow or child or a relative or dependent of his, paid by his former employer or the latter's successors, is now deemed to be income of the recipient, even if paid voluntarily and capable of being discontinued. If paid by or on behalf of a person outside the United Kingdom, it is assessable under Case V, Rule 2 (*i.e.*, on the amount *remitted* to the United Kingdom in the previous year, subject to the usual adjustments in the early and closing years). In all other cases, it is assessable under Schedule E. All such pensions, etc., are to be treated as earned income (§ 17—1932).

Any person resident in Great Britain or Northern Ireland, receiving emoluments, pension or annuity in respect of employment in the service of the Crown outside Great Britain or Northern Ireland, is assessable under Schedule E (§ 17—1923).

For 1928-29 and subsequent years the assessment is based upon the salaries, fees, etc., of the previous year (§ 45—1927).

Up to and including 1927-28 the assessment was based on the actual income of the year of assessment, but as regards fluctuating commissions or perquisites it was permissible in practice to take the amount of the preceding year; war bonuses and temporary allowances to meet the rise in the cost of living are chargeable as salary, remuneration, etc., not as perquisites (§ 28—1924).

The following classes of income are still assessed upon the basis of the actual income for the year of assessment:—

- (a) Leave pay, pensions or annuities paid out of Government Funds of any of His Majesty's

Dominions (otherwise than out of the funds of Great Britain and/or Northern Ireland) to an employee or former employee of the Crown for service outside Great Britain or Northern Ireland, or to the widow, child, relative or dependent of any such person, provided the recipient is resident in the United Kingdom (§ 17—1923 and § 45—1927).

- (b) The remuneration of any office or employment held or exercised occasionally or intermittently in the United Kingdom by a person who is not continuously resident there.
- (c) Manual weekly wage earners (in this case the assessment is upon the actual income of the half-year of assessment) (§ 45—1927).

In the case of income taxable under Schedule E, tax is not usually deducted at the source, except as regards the salaries of government officials, and railway officials.

Director's fees are assessed on the recipients under Schedule E, and companies (other than railway companies) should consequently pay directors' fees gross, and charge the full amount as an expense in their own Profit and Loss Accounts for Income Tax purposes.

The application of income does not affect the liability to tax thereon, *e.g.*, where a director applied undrawn fees and commission to paying up new shares (which were of doubtful value), he was held to be assessable upon the full amount of remuneration credited to him (*Parker v. Chapman* (1927), 13 T.C. 677).

RETURNS REQUIRED.

A return is required to be made by all employers, when served with a notice in that behalf, as to the names and addresses of the employees (except persons who have no other employment and whose remuneration does not exceed £125^h), and the amount of salaries, fees, etc., and of fluctuating commissions, etc., received by them (§ 105).

A similar return of the wages paid during each half-year to weekly wage earners who are subject to half-yearly assessment and whose wages for the half-year exceeded £62 10s. must be delivered to the Inspector of Taxes within 21 days from the date of his giving notice requiring the return (§ 105—1918; S.R. & O., No. 702, 1925, and No. 827, 1931).

For the purposes of these returns, where the employer is a body of persons (*e.g.*, a limited company), the secretary or other officer performing the duties of secretary, is deemed to be the employer, and all directors or officers are deemed to be employees (§ 105). The return must also include fees paid to the auditors.

The remuneration of the previous fiscal year must be inserted. Special columns are provided in the return forms for stating the amounts of any bonuses, commission, etc., the name and address of previous employers in the case of new employees, etc. These returns enable the Inspector to check the individual employees' own returns of income.

Where the assessment is based on the income of the year of assessment, any person assessable to tax under Schedule E who at any time during the year of assessment becomes entitled to any additional salary or fees or emolument beyond the amount for which

any assessment may have been made upon him, shall be liable to be assessed by additional or supplementary assessment (Rule 5, Sch. E).

Where a salary is paid (free of Income Tax) the Schedule E assessment should be computed by reference to the amount of salary actually paid plus the tax thereon borne by the employer (*North British Rly. Co. v. Scott* (1923), A.C. 37), even where the payment of tax is voluntary on the part of the employer (*Hartland v. Diggins*, (1926), A.C. 289). This question is discussed more fully in Chap. XI, § 9.

EXPENSES AND DEDUCTIONS ALLOWABLE.

Where a person assessable under Schedule E in respect of any office or employment is obliged to incur and defray out of the emoluments of that office expenses of travelling in the performance of his duties, or of keeping and maintaining a horse to enable him to perform them, or otherwise to incur any other EXPENSES WHOLLY, EXCLUSIVELY AND NECESSARILY IN THE PERFORMANCE OF THE DUTIES of his office, he is permitted to deduct from the amount of his salary, etc., the amount of such expenses and disbursements necessarily incurred as aforesaid (Rule 9, Sch. E). This does not extend to travelling expenses of employees from their residences to the offices of the employer, since the duties do not commence until the employee reaches the place of employment. If an employee holds an office in one town and a separate employment in another town, the expenses of travelling between the two towns are not allowed, since each employment commences when the employee reaches the place of employment (*Ricketts v. Colquhoun* (1926), A.C. 1).

Even where owing to a housing shortage an employee has to live at a distance from his work, his travelling expenses, not being incurred in the performance of his duties, are not a permissible deduction (*Andrews v. Astley* (1924), 8 T.C. 589).

A schoolmaster is not entitled to deduct the cost of a domestic servant employed to carry on the duties of his household, while his wife (a mistress in the same school at a joint salary) is engaged at the school, the expenses not being incurred in the performance of the duties of the offices of master and mistress of the school (*Bowers v. Harding* (1891), 3 T.C. 22).

Voluntary contributions by a minister towards his assistant's stipend are not expenses, wholly, exclusively and necessarily incurred in the performance of his duty (*Lothian v. Macrae* (1884), 2 T.C. 65). Nor is the expenditure incurred in obtaining an augmentation of stipend or on pulpit supply during holidays allowable as an expense (*Jardine v. Gillespie* (1907), 5 T.C. 263).

Subscriptions to professional societies, where membership of those societies is not a condition of the employment, are not expenses wholly, exclusively and necessarily incurred in the performance of the duties of the office (*Simpson v. Tate* (1925), 9 T.C. 314).

The following are allowable deductions from the amount of the emoluments :—

Annual contributions paid to a superannuation fund approved by the Commissioners of Inland Revenue under the provisions of the Income Tax Acts (§ 32—1921).

Contributions made under the requirements of any public general Act of Parliament towards

the expenses of providing a superannuation allowance or gratuity on retirement or death, *e.g.*, contributions required under the Teachers' (Superannuation) Acts, 1918 to 1925, the Police Pensions Act, 1921, etc. The name of the fund or Act should be quoted in the return.

So much of any amount expended in replacing obsolete plant or machinery (*e.g.*, a motor car used for the purposes of the office or employment) as is equal to the cost of the plant or machinery replaced, after deducting from such cost (a) the total amount of any allowances made at any time on account of the wear and tear of such plant or machinery, and (b) any sum realised by its sale.

In the case of a clergyman or minister who uses any part of his dwelling-house mainly and substantially for the purposes of his duty, a corresponding part of the rent or annual value of the house, not exceeding one-eighth.

As to wear and tear, *see* Chap. IV, § 3.

Compensation.—A sum of money paid to an employee as compensation for loss of office, *e.g.*, on liquidation, and not in respect of services rendered, is not assessable on the recipients (*Chibbett v. Robinson & Sons* (1924), 9 T.C. 48), although it is an allowable deduction in the Profit and Loss Account of the payer (*Mitchell v. Noble* (1927), 11 T.C. 372). If the liquidator makes a payment to an officer of the company "for services rendered" prior to liquidation the payment is taxable on the recipient (*Shipway v. Skidmore* (1932), 16 T.C. 748). A payment to make up for the cessation for the future of annual taxable

profits is not itself an annual profit at all (*Chibbett v. Robinson & Sons, supra*). But where there is a direct relation between the holding of the office and the right to the payment of the compensation so that the payer is under a contract to make the payment which could be enforced by action and the recipient took office on the terms that on retirement he would be entitled to such compensation, the recipient is liable to tax thereon as remuneration (*Henry v. Foster* (1931), 16 T.C. 605). On the other hand, where there is a contract under the Articles to pay such compensation, and the company pays a lump sum *to vary such contract* (i.e., to obtain a release from a contingent liability), this sum is a capital payment not assessable on the recipient (*Dewhurst v. Hunter* (1932), 16 T.C. 605).

A payment by way of deferred remuneration is taxable; the fact that it falls to be paid after the office has come to an end does not divorce it from the office, but there must be a direct relation between the holding of the office and the right to have the payment made (*ibid.* at pp. 629, 630).

BASIS OF ASSESSMENT.

As respects the year of assessment in which a taxpayer first holds an office or employment, or becomes entitled to the annuity, pension or stipend, tax must be computed on the amount of the emoluments for that year.

In the following year the assessment must be based upon the emoluments of the first year of assessment if a full year (i.e., if the employment first arose on 6th April), otherwise upon the emoluments of the year of assessment.

Thereafter the assessment is based upon the emoluments of the year preceding the year of assessment.

The first "preceding year" assessment will be reduced to the income of the year of assessment, on the taxpayer giving notice in writing to the Inspector of Taxes, within twelve months after the end of the year of assessment (§ 45 (4)—1927).

Where in any year of assessment a person ceases to hold an office or employment or to be entitled to an annuity, pension or stipend chargeable under Schedule E, tax is charged for that year on the amount of his emoluments for the period from 6th April in that year to the date of cessation; and if the emoluments for the penultimate year exceed the amount on which tax has been paid for that year, an additional assessment may be made so that tax shall be charged for that (the penultimate) year on the actual emoluments of that year (§ 45 (5)—1927). There is no right of reduction should the actual emoluments be less than the original assessment.

Illustration.

H was appointed manager of a company on 1st September, 1929, and died on 14th July, 1933. During the period his salary, including bonuses, was as follows:—

1st September, 1929, to 5th April, 1930	..	£600
Year ended 5th April	1931	.. 1,500
" "	1932	.. 1,300
" "	1933	.. 1,800
6th April, 1933, to 14th July, 1933	..	500

The assessments under Schedule E would be as follows:—

1929-30—On the actual emoluments of the period	..	£600
1930-31—Since the office first arose later than 6th April, 1929, the assessment is on the actual emoluments of the year of assessment	..	1,500

1931-32—On the emoluments of the preceding year £1,500, but reduced to the emoluments of the year of assessment on a written claim being made not later than 5th April, 1933, <i>i.e.</i>	1,300
1932-33—On the emoluments of the preceding year	1,300
1933-34—On the actual emoluments of the year of assess- ment, since the employment ceased in this year	500
An additional assessment of £500 will now ‘be raised in respect of 1932-33 to bring the assessment up to the emoluments of that year	1,800

It has been held that the fact that the duties attached to an office are enlarged or diminished does not of itself involve the taking up of a new office, *e.g.*, where a director is appointed to the executive committee of directors, for which he receives additional remuneration, such appointment does not constitute a new office (*May v. Falk* (1932), 17 T.C. 218).

An actress who performs in various stage plays and acts for films and wireless, etc., does not hold anything in the nature of an office and is not assessable under Schedule E; she exercises a profession assessable under Case II, Schedule D (*Davies v. Braithwaite* (1931), 10 A.T.C. 286).

The “benefit” given to a professional cricketer has been held not assessable (*Reed v. Seymour* (1927), A.C. 554). The proceeds of the benefit match, both of the proportion of “gate money” and the public subscription, was considered to be a testimonial and not a perquisite; not remuneration for services, but a personal gift, expressing the gratitude of the employers and of the cricket loving public for what the professional had already done and their appreciation of his personal qualities.

On the other hand, a sum paid to a professional footballer "as a reward for loyal and meritorious service in lieu of presumed accrued share of benefit" on his transfer to another club, was held to be assessable (*Davies v. Harrison* (1927), 11 T.C. 707), since it arose out of an agreement under which the player served.

Rent Free Residence.

In some cases, an employee, *e.g.*, a bank manager, is allowed or required to live on the premises where the business is carried on, or is provided, rent free, with a dwelling house as part of his remuneration. In such cases the employers have the use of the premises, and are therefore the legal occupiers, assessable under Schedule A. Although the employee resides in the premises he does so as the servant of his employer, and for the purpose of performing the duty he owes to his employer, and the tax is no more leviable on him than it would be on a caretaker, nor can assessments be made on him under any other Schedule in respect of the premises. It would appear from the judgment of Lord Warrington in *C.I.R. v. Miller* ((1930), A.C. 222), that it is entirely irrelevant to consider whether the employee has power to let or turn his benefit into cash.

If the employee is the occupier within the meaning of the Rules of Schedule A, he is assessable under that Schedule, and if he has no recourse to any other person for the tax, because he pays no rent, the annual value is part of his income. If the employer can be regarded as the legal occupier, then the employee's income cannot include the annual value.

Error or Mistake.

4. The provisions of § 24, Finance Act, 1923, (which provide for relief in respect of error or mistake) apply to tax charged under an assessment under Schedule E as they apply to tax charged under an assessment made under Schedule D (§ 45 (8)—1927) (*see* Chap. IV, § 16).

Appeal against an assessment under Schedule E can, if desired by the taxpayer, be made to the Special Commissioners (§ 19—1922), or to the General Commissioners (§ 136).

Since Income Tax is an appropriation of profits (*Ashton Gas Co. v. Attorney-General* (1906), A.C. 10), Income Tax is not deductible from profits in arriving at a commission on "net profits" payable under an agreement with a manager (*Johnston v. Chestergate Hat Manufacturing Co.* (1915), W.N. 277).

§ 6.—Weekly Wage Earners.

Weekly wage earners, *i.e.*, persons engaged in manual labour who receive wages calculated by reference to the hour, day, week or any period less than a month, at whatever intervals the wages may be paid, or who receive wages, however calculated, which are paid daily, weekly, or at any less intervals than a month, are assessable to Income Tax in respect of their wages in each half-year of the year instead of the whole year.

The weekly wage earners are in all cases assessed and charged half-yearly in respect of the actual amount of the wages.

Clerks, typists, draftsmen, or persons employed in any other similar capacity will not be assessed in this way.

Any question as to whether any person is a weekly wage earner is determined jointly by the Commissioners of Inland Revenue and the General Commissioners, whose determination will be final and conclusive (Rule 2, Sch. D, Cases I and II, now deemed to be one of the Rules of Schedule E (§ 18 (2)—1922)).

From the gross income can be deducted the payments necessarily and exclusively made for the purposes of the employment on account of tools, boots, overalls, explosives, etc. The trade union agrees a scale for the particular trade with the Board of Inland Revenue; in cases where there is no trade union, the allowance is agreed with the Inspector or fixed by the Commissioners on appeal.

The right to allowances or deductions is not affected by half-yearly assessment, and the total wages on which the tax is charged, and the total tax charged for the two halves of the year, will for these purposes be deemed respectively to be the total income for the year from the wages and the total tax charged for the year in respect of the wages. The Commissioners of Inland Revenue may, if they think fit in any case, in accordance with regulations made by them, allow any such allowances or deductions, as may be applicable, by way of reduction of the half-yearly assessment or repayment of the half-yearly tax (§ 22—1918 and § 18—1925).

Not more than one-half of the year's allowances may be deducted from the assessment for the first half of the year, the residue being allowed in the second half, or by repayment if necessary. (§§ 4 and 5, S.R. & O., No. 702, 1925).

Illustration.

A. is a manual weekly wage earner. His wife also earns income from time to time in similar employment. A. has two children under 16, and maintains his wife's widowed mother.

For the year ended 5th April, 1933, their incomes were :—

	A.	Mrs. A.
Half-year to 5th October, 1932	£156	£80
do. 5th April, 1933	150	20

COMPUTATION, 1932-33.

	Half-year to 5th October, 1932	Half-year to 5th April, 1933
A.'s Wages	£156 0 0	£150 0 0
Mrs. A's „	80 0 0	20 0 0
	<hr/>	<hr/>
	236 0 0	170 0 0
<i>Deduct Allowances —</i>		
Earned Income ..	£47 4 0	£34 0 0
Personal ..	75 0 0	75 0 0
Additional Personal ..	22 10 0	22 10 0
Children ..	45 0 0	45 0 0
Dependent Relative ..	12 10 0	12 10 0
	<hr/>	<hr/>
	202 4 0	189 0 0
	<hr/>	<hr/>
	£33 16 0	<u>Nil.</u>

Tax payable, 1st January, 1933—

£33 16s. 0d. @ 2/6 .. = £4 4 6

Less Widows', Orphans
and Old Age Contribu-

1 tory Pensions—Contri-
butions, 15/- @ 2/6 = 1 10

£4 2 8

Tax is reclaimable after 5th April, 1933, on the excess of the allowances for the half-year over the total incomes, *i.e.*, £19 @ 2/6 = £2 7s. 6d., plus Pensions Contribution, 15/- @ 2/6 = 1/11, a total of £2 9s. 5d.

The tax borne is thus tax on the year's income less the year's allowances, *i.e.*, £406 less £391 1s. 0d. @ 2/6 = £1 17s. 0d., less Pensions Contributions, 30/- @ 2/6 = 3/9, net £1 13s. 3d.

NOTE—The Pensions Contribution is treated as £1 for a man and 10/- for a woman, *i.e.*, 30/- for the two. It has been assumed that in the example in question, no restriction has been imposed owing to the wife's intermittent employment.

The Commissioners of Inland Revenue are empowered by regulation to provide for assessment by the Inspector and for the application of the rules and provisions of Schedule F, where they are not otherwise applicable. The right of appeal to the General Commissioners is preserved (§ 131). Appeals may also be made to the Special Commissioners (§ 19--1922, and § 10, S.R. & O., No. 702, 1925).

Provisions are made whereby weekly wage earners may pay the tax by means of special stamps which can be purchased from the Post Office. Little advantage is taken of this convenient method of providing for the tax by regular purchases of stamps. Cards for the affixation of the stamps can be obtained from the Collector of Taxes.

CHAPTER IV.
 SCHEDULE D.
 CASES I AND II.

§1 —BASIS OF ASSESSMENT UNDER SCHEDULE D

2 —RULES AND REGULATIONS FOR CALCULATING PROFITS

- (a) Deductions allowed
- (b) Deductions not allowed
- (c) Decisions as to Items allowed or not allowed
- (d) Contributions for National Insurance
- (e) Excess Profits Duty and Corporation Profits Tax
- (f) Annual Value of Premises Abroad

3 —ALLOWANCES FOR WEAR AND TEAR AND OBSOLESCENCE.

4 —ADJUSTMENT OF ACCOUNTS FOR INCOME TAX

5 —TREATMENT OF RENT UNDER SCHEDULE D

6 —INTEREST ON LOANS

- (a) Deduction of Tax
- (b) Treatment of Interest where the Payer makes a Profit.
- (c) Treatment of Interest where the Payer makes a Loss
- (d) Where a loss is converted into a Profit through writing back Interest on Loans
- (e) Where the Interest varies in Amount
- (f) Interest received Gross

7 —CHANGE IN DATE TO WHICH ACCOUNTS ARE MADE UP, ETC.

8 —NEW BUSINESSES

9.—DISCONTINUANCE OF BUSINESS

10 —CHANGE IN OWNERSHIP OF A BUSINESS

11 —PARTNERSHIP ASSESSMENTS

- (a) Where no claim for Allowances or Relief is made.
- (b) Where a claim for Allowances is made
- (c) Fluctuating Interest on Capital and Salaries of Partners.
- (d) Partnership Returns

12 —DISTRIBUTION OF INCOME TAX OVER THE PROFITS OF A LIMITED COMPANY

13.—RATE FOR DEDUCTION OF TAX WHERE THE STANDARD RATE IS ALTERED.

14.—RESERVES FOR INCOME TAX.

- (a) Private Firms
- (b) Limited Companies

15 —ASSESSMENT OF SHARE PROFITS.

16.—ERROR OR MISTAKE.

CHAPTER IV.

SCHEDULE D.

CASES I AND II.

§ 1.—Basis of Assessment under Schedule D.

With the exception of Case VI, the basis of assessment under Schedule D is the income of the year preceding the year of assessment, *i.e.*, the “previous year’s” income. By the previous year is meant the preceding fiscal year, unless the Acts lay down some other period. In Cases I and II such other period is laid down, inasmuch as the accounting period of the business is to be looked at, and not the fiscal year. The rules for determining the accounting period are explained in Chap. IV, § 7.

Special rules are provided for the basis of assessment where a preceding year is not available, *e.g.*, in the early years of a business, or of the holding of a source of income. These are explained hereafter as they arise.

§ 2.—Rules and Regulations for Calculating Profits.

It has already been pointed out that the amount of profit as shown by the accounts of a business will not usually represent the profit for Income Tax purposes, quite apart from the return being based on the profits of the previous year. A considerable

number of adjustments will commonly be found necessary to comply with the Income Tax regulations. These will mainly fall under certain classes as follows :—

- (1) Expenditure or losses of a CAPITAL nature which may have been charged to revenue. Although it may be very prudent on the part of the taxpayer to charge such items to his Profit and Loss Account, the State does not recognise such losses as chargeable against the income to be taxed. Under this heading will be found items such as improvements to premises, extension of plant, depreciation (although an allowance may be claimed in respect of wear and tear of plant and machinery). Similarly capital profits can be excluded as they are not assessable to Income Tax.
- (2) APPROPRIATIONS OF PROFIT as between the proprietors of the business. These will include partners' salaries, interest on capital, and similar items, which, although properly charged in the Profit and Loss Account for the purpose of adjusting the rights of the partners as between themselves, nevertheless form part of the taxable profits.
- (3) Other appropriations of profit. Under this heading will be included such items as Income Tax, which being a levy on the profits is legally an appropriation of profit and not a charge; all general reserves, whether made against anticipated losses or not; voluntary gifts, etc.
- (4) PAYMENTS TAXABLE AT THE SOURCE. This will include items such as annual interest on loans, annuities, royalties on patents, etc. It is the duty

of the party making the payment to deduct tax from the amount payable (*see* Chap. IV, § 6). As he must account for the Income Tax so deducted, he is not entitled to deduct the item before arriving at his assessable profits. Correspondingly the taxpayer is entitled to deduct from his profits all income received by him less tax which may have been placed to the credit of his Profit and Loss Account.

- (5) LOSSES OR PROFITS NOT CONNECTED WITH OR ARISING OUT OF THE TRADE. Profits of this nature are not necessarily exempted from the tax, but they are not assessable as part of the trading profits.
- (6) INCOME ASSESSABLE UNDER SOME OTHER CASE OR SCHEDULE.
- (7) EXPENSES NOT WHOLLY AND EXCLUSIVELY LAID OUT FOR THE PURPOSE OF EARNING THE PROFITS.

The following is a comprehensive list of the deductions allowed, and deductions not allowed (based on Rule 3, Cases I and II, Schedule. D).

(a) Deductions are allowed—

For repairs of premises occupied for the purpose of the trade, etc., and for the supply or repair of implements, utensils, or articles employed. Any element of improvement will be disallowed.

For debts proved to be bad ; also for doubtful debts to the extent that they are respectively estimated to be bad (*i.e.*, a reserve against specific debts is allowed, but a reserve against debtors generally, *e.g.*, one based on a percentage of debtors, is not). (Where such debts are subsequently recovered,

the amount received must be brought in as a profit of the year of receipt. Similarly, where amounts reserved for specific doubtful debts are written back, tax must be paid thereon, but when a general reserve, which was not allowed when set aside, is written back, it must be excluded from the profits for tax purposes in the year in which it is so written back).

✓ For the rent of business premises or alternatively (if the premises are within Great Britain or Northern Ireland) the annual value.

If part of the premises is used as a residence, only the appropriate proportion of the rent or annual value is allowable.

(The annual value to be taken for this purpose is the net amount of the Schedule A assessment as reduced by the statutory allowance for repairs, except in the case of mills, factories, or other similar premises, when the gross amount before deducting the repairs allowance is allowable.)

For the amount charged to United Kingdom tax on account of premises situate in the Irish Free State to the extent that they are used for the purposes of the trade.

For (in the case of a trade) one-sixth✓ of the annual value of any mills, factories, or similar premises situate outside the United Kingdom and occupied by the owner for the purposes of the trade. Annual value for this purpose is to be computed according to the principles governing the estimation of the annual value, for the purposes of Schedule A, of similar premises in the United Kingdom—that is, in general, by reference to the rack rent✓ at which the premises would let by the year.

For so much of any amount expended in replacing (obsolete) plant or machinery as is equal to the cost of the plant or machinery replaced, after deducting from such cost (a) the total of any allowances already made for the wear and tear of such plant or machinery (including the additional deduction of one-tenth where applicable), and (b) any sum realised by its sale.

For any other disbursements or expenses wholly and exclusively laid out for the purposes of the trade, etc.

For any ordinary annual contribution to an approved superannuation fund (§ 32—1921).

(b) No Deductions are allowed—

For any sums not wholly and exclusively incurred for the purposes of the trade, etc.

For any annual interest, annuity, or other annual payment, payable out of the profits or gains, or for any royalty or other sum paid in respect of the user of a patent. (The tax on such interest, patent royalty, or other annual payment should be deducted from the person to whom the payment is made.)

For any sums paid as salaries to proprietors, or any interest on capital, or drawings by proprietors.

For any sums invested or employed as capital in the trade, etc., or any capital withdrawn therefrom.

For any sums expended in improvement of premises, or written off for depreciation of land, buildings or leases.

For any loss not connected with, or arising out of the trade, etc.

For any expenses of maintenance of the persons assessable, their families, or establishments; or for any sum expended for any other domestic or private purpose.

For any loss recoverable under an insurance or contract of indemnity. Where stock has been destroyed by fire, the full amount recovered in respect thereof under an Insurance Policy is a trading receipt and must be credited in computing the profits for Income Tax purposes (*Green v. Gliksten* (1929), A.C. 381).

For interest paid on arrears of Excess Profits Duty, or Munitions Exchequer Payments.

For any sum paid as United Kingdom Income Tax, and any sum paid as Dominion Income Tax except in certain circumstances (*see* Chap. X, § 19).

Foreign Income Tax paid in respect of the profits in the place where they arise may, however, be deducted.

For wear and tear of machinery and plant; but an allowance may be claimed in respect of this item (*see* Chap. IV, § 3).

For the rent or net annual value of any dwelling-house or domestic offices or any part thereof, except such part as is used for the purposes of the trade or profession: Provided that where any such part is so used, the sum so deducted shall be such as may be determined by the Commissioners and shall not, unless in any particular case the Commissioners are of opinion that, having regard to all the circumstances,

some greater sum ought to be deducted, exceed
' two-thirds of the annual value or of the rent *bonâ
fide* paid for the said dwelling house or offices.

(c) Decisions as to Items allowed or not allowed.

The following are some of the more important decisions:—

The fact that expenditure is necessary to enable profits to be earned is inconclusive as regards its admissibility as a deduction. It may be capital expenditure (*Ounsworth v. Vickers* (1915), 6 T.C. at p. 677).

Debentures.

Debenture interest paid by an English company to foreign debenture-holders, in respect of debentures charged on foreign property *not allowed* (*Alexandria Water Co. v. Musgrave* (1883), 11 Q.B.D. 174).

Expense of issuing debentures *not allowed* (*Texas Land & Mortgage Co. v. Holtham* (1894), 10 T.L.R. 337).

Owner's Rates (Scotland).

Owner's Rates are not an admissible deduction in computing profits under Schedule D (*Commissioners of Inland Revenue v. Scottish Central Power Company* (1931), 15 T.C. 761). These rates are an admissible deduction in arriving at the Net Annual Value under Schedule A (Rule 4 (1), No. V, Sch. A).

Bonus on Loans.

Bonus payable on repayment of borrowed money *not allowed* (*Arizona Copper Co. v. Smiles* (1891), 29 Sc. L.R. 134).

Removal Expenses.

Expenses of removing business premises *not allowed* (*Granite Supply Association v. Kitton* (1905), 43 Sc. L.R. 65). Compulsory removal expenses are, however, allowed in practice, and in any event the cost of removing stock-in-trade is allowed. A circus proprietor, or the proprietor of a travelling business, is entitled to deduct his moving expenses (*Eastmans v. Shaw* and *v. C.I.R.* (1927), 14 T.C. 218, 225). The expenses of removing plant and machinery *if* not allowed as deductions from revenue, may be added to the cost of the asset for the purposes of computing the wear and tear allowance.

Loss on Closing Factory.

Loss incurred through closing a factory, and removing and reopening elsewhere on a smaller scale, *not allowed*, on the ground that the loss is a loss of capital (*Smith v. Westinghouse Brake Co.* (1888), 2 T.C. 357).

Loss Charged to Insurance Fund.

A steamship company, operating an Internal Insurance Fund to cover a portion of their risk, suffer a total loss. The proportion of such loss chargeable against the Insurance Fund *not allowed* as a deduction, being a loss of capital. The annual premiums that would have been payable to underwriters in respect of the portion of the risk taken by the company were charged against profits, but in the course of the judgment it was said that such charge was only a reservation out of profits to provide for future losses of capital, and consequently could not be deducted (*Inland Revenue v. Western Steamship Co.* (1907), 44 Sc. L.R. 715).

Cost of Appeal.

The legal costs in connection with an appeal to the Commissioners are not an allowable deduction (*Allen v. Farquharson Bros. & Co.* (1932), 17 T.C. 59), but by concession, the costs of a successful appeal against a sur-tax assessment on a company under § 21 (1922) are allowed.

Bad Debts.

Where a proper estimate is placed on a debt for the purpose of accounts and is a reasonable estimate when made, it cannot be overthrown by any subsequent facts (*e.g.*, granting further credit to the debtor) which could justify the Commissioners in holding that the estimate was based on insufficient materials (*Anderton & Halstead v. Birrell* (1931), 10 A.T.C. 270).

Bad debts in respect of cash advances not laid out for the purpose of trade are *not allowed* (*English Crown Spelter Co. v. Baker* (1908), 99 L.T. 353), but if advanced for the purpose of trade the bad debt will be *allowed* (*Reid's Brewery Co. v. Male* (1891), 2 Q.B. 1).

Defalcations.

The loss arising to a company where, on the death of its managing director, it was found that payments, etc., relating to his private affairs had passed through the books, *not allowed*. It was held that the loss was not a trading loss (*Curtis v. Oldfield* (1925), 9 T.C. 319).

(It should be noted that by virtue of his position as managing director, he could do exactly what he liked. Defalcations by subordinate employees are allowed as deductions.)

Exhaustion of Nitrate Grounds.

Deduction in respect of exhaustion of nitrate deposits, in the case of a company owning grounds situate abroad on which is found the raw material from which the nitrate is produced, *not allowed* (*Alianza Co. v. Bell* (1906), A.C. 18).

Losses.

Loss of capital invested in subsidiary company, *not allowed* (*Jacobs, Young & Co. v. Harris*, 11 T.C. 221).

Payment for the cancellation of contract for construction of a fixed asset, *not allowed* ("Countess Warwick" *Steamship Co. v. Ogg*, 8 T.C. 652).

A lump sum payment to discharge an onerous contract, thereby relieving future revenue without acquiring any new asset, or enhancing the value of existing capital, *allowed* (*Anglo-Persian Oil Co. v. Dale* (1931), 16 T.C. 253).

Loss on realisation of shares taken up to secure contracts, *not allowed* (*Stott v. Hoddinott* (1916), 7 T.C. 85).

Cost of unexecuted contracts taken over with a business, *not allowed* as a deduction from the profits arising from the performance of the contracts (*City of London Contract Corporation v. Styles* (1887), 2 T.C. 239).

A lump sum payment to a director (who had been appointed for life) to secure his retirement, *allowed* (*Mitchell v. Noble* (1927), 11 T.C. 372). A payment to get rid of a servant in the interests of the trade is a proper deduction (*ibid.* 415).

Loss of money advanced to managing director in excess of the commission due to him, *not allowed* (*Roebank Printing Co. v. Commissioners of Inland Revenue* (1928), 13 T.C. 864).

Release of Debt.

A company released a debt due to an associated company in order to give it relief—in effect, giving it new capital—on condition that the sum was to be applied in writing down its main asset. Held not to be a trading receipt of the latter company (*British Mexican Petroleum Co. v. Jackson* (1932), 16 T.C. 570).

Surrender of Lease.

Payment to lessor as consideration for surrender of lease of trade premises, *not allowed* (*Cowcher v. Mills* (1927), 13 T.C. 216).

Employee's Funds.

Lump sum set aside in hands of trustees as a fund for relief, out of the income thereof, of invalidity, etc., amongst their employees, *not allowed* (*Rowntree & Co. v. Curtis* (1924), 8 T.C. 678).

Lump sum payment to establish a pension fund, *not allowed* (*Atherton v. British Insulated and Helsby Cables* (1925), 10 T.C. 155).

Dividends as remuneration.

Dividends on shares held by directors (the Articles contained a provision that such dividends were to be regarded as part of the remuneration of the directors, but the shares were acquired by the directors for valuable consideration and were held unconditionally), *not allowed* (*Eyres v. Finnieston Engineering Co.* (1916), 7 T.C. 74).

Hire Purchase Instalments.

Payments by a coal company to a wagon company under a hire-purchase agreement, *allowed in so far as* the annual payments represented consideration

for the use^v of the wagons (as distinct from payments for an option at a future date to purchase the wagons at a nominal price) (*Darngavil Coal Co. v. Francis* (1913), 7 T.C. 1).

Rubber Estates.

Expenditure of a rubber company for superintendence, weeding, etc., on the whole estate, *allowed* although only one-seventh produced rubber (the remainder being in process of cultivation for production of rubber) (*Vallambrosa Rubber Co. v. Farmer* (1910), 5 T.C. 529).

Subscriptions to Trade Associations.

Subscription to 'Coal Owners' Association, the object of which was to indemnify its members in the event of deficiency or stoppage of output caused by strikes, etc., *not allowed*, on the ground that the payment was not money expended for the purpose of trade (*Rhymney Iron Co. v. Fowler* (1896), 2 Q.B. 79); but payment to a trade association, formed for the purpose of keeping up prices, *allowed* as a deduction, on the ground that the payment was exclusively made for the purpose of the trade (*Guest, Keen & Nettlefold, Ltd. v. Fowler* (1910), 5 T.C. 511).

Whether subscriptions or levies paid to a trade association are allowable depends on the purposes to which the association devotes the moneys so received. Generally speaking, if all the expenses incurred by the association are such as would be properly allowable if incurred by the contributories individually, the whole of the contributions and levies paid by the members would be allowable on satisfactory proof of the circumstances.

If the expenses of the association are partly admissible and partly inadmissible, an apportionment

of the contribution may be necessary (*Lochgelly Iron & Coal Co. v. Crawford* (1913), 6 Tax Cas. 267).

In practice it is customary for trade associations to agree to pay tax on the excess of their receipts over allowable expenses, in which case the whole of the payments made by members are allowed as a charge in the accounts of the members.

Each Inspector of Taxes has a list of the associations which have entered into such an agreement, and unless the association in question is on that list, the Inspector will resist the allowance of the contribution. In view of the difficulty of proving the relative proportions of the contributions applicable to the respective activities of such associations, the Inspector is usually successful if the matter is taken before the Commissioners. It is of vital importance that the exact and full name of the association be given to the Inspector in order to ensure that the Inspector does not overlook it if on his list.

Legal Expenses.

Revenue expenditure, *e.g.*, on debt recovery, is allowed, but the expenses of acquiring assets, renewing leases, etc., are capital and *not allowed*. As to the exceptional position of brewers, see Chapter VI, § 4.

Preliminary Expenses.

The expenses of forming a company or raising its capital, *not allowed* (*Texas Land and Mortgage Co. v. Haltham* (1894), 10 T.L.R. 337; 3 T.C. 255).

Interest on Temporary Investments.

Where a finance company deals in temporary investments, the profits on which are assessable under Case I, Sch. D, the interest on bonds bought

cum coupon and sold *ex* coupon, being taxed by deduction as interest, cannot again be taxed as part of the profit on realisation of the bonds (*Thompson v. The Trust and Loan Co. of Canada* (1932), 16 T.C. 394).

(d) Contributions for National Health, Unemployment, and Pensions Insurance.

Contributions under the various National Insurance Acts, paid by employers in respect of persons employed by them are allowable as a business expense in estimating the assessable profits under Schedule D.

(e) Excess Profits Duty and Corporation Profits Tax.

Excess Profits Duty under the Finance (No. 2) Act, 1915, and later Acts, and Corporation Profits Tax under the Finance Act, 1920, and later Acts, were allowed as deductions for Income Tax purposes in the year which included the end of the accounting period in respect of which such duty was paid.

Where Excess Profits Duty or Corporation Profits Tax is repaid, the amount must be treated as profit for Income Tax purposes for the year in which it is received.

(f) Annual Value of Premises Abroad.

Where any lands, tenements, hereditaments or other premises of whatsoever description used for the purpose of any trade, manufacture, adventure, concern, profession, employment or vocation, are situated outside the United Kingdom, and owned by the person carrying on such trade or business, no deduction or set-off can, in estimating the amount of annual profits or gains arising or accruing from that trade, manufacture, adventure, concern, profession, employment or vocation, in any manner be allowed on account or in respect of the annual value of those premises (Rule 5, Cases I and II, Schedule D). This is modified in

the case of mills, factories or similar premises owned abroad when one-sixth of the annual value is allowed as a deduction (Finance Act, 1919, § 18).

In the case of properties situated in this country, Section 24 (1) of the Rating and Valuation Act, 1925 (*see* Appendix V), took out of rating the machinery specified, this being broadly Process Machinery.

As a result, the Schedule A assessments on factories in this country also excluded process plant. The Revenue Authorities contend that the same principle should be applied to factories situated abroad and that process plant and machinery should be excluded from the calculations in arriving at the annual value of the factory.

§ 3.—Allowances for Wear and Tear and Obsolescence.

The Commissioners for General or Special Purposes are empowered, in assessing profits or gains of any trade, profession, vocation, employment or office (and profits from lands, including woodland, ascertained otherwise than by reference to assessable value) to allow SUCH DEDUCTION AS THEY MAY THINK JUST AND REASONABLE, AS REPRESENTING THE DIMINISHED VALUE BY REASON OF WEAR AND TEAR, DURING THE YEAR, of any MACHINERY OR PLANT USED for the purposes of the concern and BELONGING TO THE PERSON or company by whom the concern is carried on (Rule 6, Schedule D, Cases I, and II ; and § 16—1925). In the case of trades, the Additional Commissioners are to make the allowance (Rule 6).

In practice an allowance can usually be obtained on trade fixtures and fittings as well as pure plant.

Where machinery or plant is let, and the person leasing is bound to deliver up the same at the expiration

of the lease in good condition, such plant will be regarded, for the purpose of wear and tear, as belonging to the lessee. If, however, the burden of maintaining the plant falls on the lessor, he is entitled to make a claim for repayment of tax. in respect of such wear and tear, as the Commissioners may think just and reasonable, but such claim must be made within twelve calendar months after the expiration of the year of assessment (*ibid.*).

For the purpose of enabling these deductions to be allowed, the taxpayer must specifically claim in his return an allowance in respect of wear and tear. It is essential that the allowance be claimed in a return for the year, even where there are no assessable profits, otherwise the allowance in respect of that year may be refused for the purpose of carry forward to succeeding years. The amount that will be allowed varies materially according to the particular class of plant or machinery, and also according to the practice adopted in the books of dealing with the item. If repairs are charged to revenue, and renewals provided out of capital, wear and tear will be allowed, but if renewals are also provided out of revenue, no wear and tear is as a rule allowed.

Whatever allowance is granted for 1932-33 onwards is increased by one-tenth. This does not apply to amounts brought forward from previous years (§ 18—1932).

In certain cases also allowance is made for loss through OBSOLESCENCE. In arriving at the profits or gains chargeable there shall be allowed to be deducted as expenses incurred in any year (*i.e.*, deducted in the Profit and Loss Account or from the emoluments, as the case may be, of the year on the profit of which the assessment is based) SO MUCH OF ANY AMOUNT

EXPENDED in that year IN REPLACING ANY OBSOLETE PLANT OR MACHINERY AS IS EQUIVALENT TO THE COST OF THE PLANT OR MACHINERY REPLACED after DEDUCTING from that cost the total amount of any ALLOWANCES which have at any time been MADE in estimating profits and gains ON ACCOUNT OF WEAR AND TEAR of that plant and machinery, AND any SUM REALISED BY THE SALE of that machinery or plant (Rule 7).

The cost of the new machinery is then treated as an addition to the plant.

The deduction allowed in respect of wear and tear represents wear and tear for the year of assessment, and is not based on the previous year, consequently the amount of the allowance is deducted from the profit after this has been ascertained. It will be found frequently that the capital value of the plant, etc., upon which the allowance is calculated, differs from that appearing in the books of the business. This may arise in two ways. First, the amount of the depreciation written off in the accounts year by year may exceed the rate allowed for wear and tear, in which event it is permissible to calculate the wear and tear on the capital value as it would have appeared in the books had only the amount allowed been written off. Secondly, if the wear and tear allowed is in excess of that written off in the books, the amount upon which the allowance must be calculated will be less than the capital value according to the books. The capital value is usually taken as at the last day of the preceding business year, although new plant acquired between the last day of the accounting year and the commencement of the fiscal year of assessment may be added.

Additions during the year are added to the amount in the computation for the purpose of

allowance in the *following* fiscal year, sales being deducted from the capital value.

Where full effect cannot be given to the deduction for wear and tear in any year, owing to there being no profits or gains chargeable for that year, or to the profits or gains chargeable being less than the deduction, the deduction (or the part thereof to which effect has not been given) is carried forward and added to the wear and tear allowance of the following year, and any unutilised balance carried forward to the year next following, and so on until the allowance is exhausted (Schedule D, Cases I and II, Rule 6).

Where there is a change in ownership of a business, the successor cannot claim his predecessor's unexhausted wear and tear allowances, except in the case of a partnership which falls to be treated as a continuance of the same business (*see post*).

No deduction for wear and tear, or repayment on account of any such deduction, can be allowed in any year, if the deduction, when added to the deductions allowed on that account in any previous years to the person by whom the concern is carried on, will make the aggregate amount of the deductions exceed the actual cost to that person of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by way of renewal, improvement, or reinstatement (Rule 6, Schedule D, Cases I and II). In order to entitle a lessee to wear and tear allowance he must not only be liable to maintain the equipment, but must also have incurred capital expenditure in acquiring it or improving it (*Heyhoe v. Slough Theatre Co.* (1933), 12 A.T.C. 228).

In practice this difficulty is avoided by basing the allowance on the diminishing value of the plant;

a practice which received the approval of the Judges in the case of *Peninsular & Oriental S. N. Co. v. Leslie* ((1900), 79 L.T. 118).

The books forming part of a solicitor's law library are not plant and machinery within the meaning of the Rules governing wear and tear and obsolescence (*Daphne v. Shaw*, 11 T.C. 256).

Where an application is made to the Commissioners of Inland Revenue for the alteration of the amount of any deduction for wear and tear, the Commissioners, unless they are of opinion that the application is frivolous or vexatious, shall refer the case to the Board of Referees, and that Board shall, if they are satisfied that the application is made by or on behalf of any considerable number of persons engaged in any class of trade or business, take the application into their consideration, and determine the deduction to be allowed (Rule 6).

In the case of a claim for wear and tear allowance in any year by a person in respect of lands (including woodlands), the appropriate allowance shall be deemed to have been allowed for any previous year for which the profits were assessed under Schedule B (§ 16—1925).

A Schedule of Special Rates of allowances for wear and tear of plant and machinery, fixed by agreement with regard to certain trades, will be found in Appendix II.

A scale of allowances in respect of second-hand steamships is in force by which the depreciation on second-hand steamships purchased during the War or after the War, is to be arrived at by reference to the price actually paid, on the basis of the expectation of life of the ship as at 6th April, 1918. The full Memorandum is printed in Appendix II.

Illustration.

The accounts of the Atlas Co., Ltd., as adjusted for the purposes of Income Tax assessment under Schedule D, showed the following results :—

Years ended 31st December : 1930—£220 ; 1931—£990 ; 1932—£1,140.

Prior to the year of assessment 1929-30, the assessable profits had been in excess of the allowance for Wear and Tear.

The written down value of the plant and machinery at 31st December, 1930, was taken for Income Tax purposes at £5,000. The rate of allowance was fixed by the Commissioners at 5%.

During 1931 additions amounting to £300 were made to the Plant, and also during 1931 a machine which had cost £1,000 in 1928 was scrapped as obsolete, realising £40 on sale. This machine was replaced at a cost of £1,400 in 1932.

Show what were the assessments under Schedule D for the years 1931-32, 1932-33 and 1933-34.

CLAIMS FOR WEAR AND TEAR AND OBSOLESCENCE.

Value 31st December, 1930	..	..	£5,000
Claim 1931-32	..	..	250
			<hr/>
Value 31st December, 1931	..	..	4,750
Additions, 1931	..	..	300
			<hr/>
			5,050
<i>Less Machine Sold, available for</i>			
<i>Obsolescence Claim when replaced.</i>			
Written down value, 31st Dec.			
1931 (<i>see below</i>)	..	..	857
			<hr/>
			4,193
Claim 1932-33	..	£210	
Add one-tenth	..	21	
		<hr/>	231
			<hr/>
Value 31st December, 1932	..	..	3,962
Addition, 1932	..	..	1,400
			<hr/>
			5,362
Claim 1933-34	..	£268	
Add one-tenth	..	27	
		<hr/>	295
			<hr/>
Value 31st December, 1933	..	.	£5,067

COMPUTATION OF WRITTEN DOWN VALUE OF MACHINE SCRAPPED.

Value, 31st December, 1928	..	..	£1,000
Claim 1929-30	..	..	50
			<hr/>
Value, 31st December, 1929	..	..	950
Claim, 1930-31	..	..	48
			<hr/>
Value, 31st December, 1930	..	.	902
Claim, 1931-32	..	..	45
			<hr/>
Value, 31st December, 1931	.	..	£857
			<hr/>

COMPUTATION OF OBSOLESCENCE CLAIM

Original Cost of Machine scrapped	..	..	£1,000
<i>Deduct</i> Wear and Tear Allowed			
£ (50 + 48 + 45)	..	..	143
Proceeds of Sale	..	..	40
			<hr/>
			183
Obsolescence Claim	..	..	£81

(NOTE.—Had the new machine cost less than £817, only the cost would have been allowed.)

ASSESSMENTS.

				Wear and Tear carried forward
1931-32—Profits of 1930	..	..	£220	
Less Wear and Tear (part)	..	..	220	£30
			<hr/>	
Assessment	..	..	Nil.	
			<hr/>	
1932-33—Profits of 1931	..	..	£990	
Less Wear and Tear—				
1932-33	..	..	£231	
Brought forward	..	..	30	
			<hr/>	
			261	
			<hr/>	
Assessment	..	..	£729	
			<hr/>	
1933-34—Profits of 1932	..	..	£1,140	
Less Obsolescence Claim	..	..	817	
			<hr/>	
			323	
Less Wear and Tear, 1933-34	..	..	295	
			<hr/>	
Assessment	..	..	£28	
			<hr/>	

Notes to Illustration.

- (1) In practice, where the plant sold or scrapped cannot be traced in the computation, as is frequently the case with plant with a long life. Inspectors may agree to allow the written down value of the Plant to remain in the computation, requiring only the Proceeds of Sale to be deducted.
- (2) There is no limit to the period during which unexhausted Wear and Tear Allowances may be carried forward; they can be so treated until utilised as deductions. On the other hand, it is not permissible to "miss" a year (e.g., where the assessable profit is so small that it would be absorbed by other allowances), wherever there is an assessable profit the Wear and Tear Allowance will be deducted, and only the unabsorbed balance carried forward (see Chap VII, § 2, as to losses).

§ 4.—Adjustment of Accounts for Income Tax.

The preparation of accounts by a firm or limited company for Income Tax purposes requires considerable care and knowledge of the rules and regulations prescribed by the various Income Tax Acts. It has already been explained in the section dealing with statutory income that Income Tax is payable, not on the profits as shown by the Profit and Loss Accounts, but on the statutory profit based on the profits after these have been subjected to adjustments required by law. These adjustments are in many cases very material and considerably affect the figure upon which Income Tax is payable.

There are two methods of arriving at the correct figure of profit for Income Tax purposes, as follows:—

- (1) By taking the net profits as shown by the Profit and Loss Account, adding thereto the amounts charged in the Profit and Loss Account which are disallowed, and deducting those items of receipt upon which tax has already been paid

by way of deduction, or which are assessed to taxation under any other Case or Schedule, or which are not subject to tax. This is the method most usually adopted. In this work the adjustment is shown in debit and credit form, as it is found that students follow it more readily.

- (2) By taking the gross profits as shown by the Profit and Loss Account, and charging against them only those items which are allowed as proper expenses incurred in carrying on the business or trade, and crediting only those items of receipt which are chargeable to tax as part of the business operations, but which have not already been subjected to taxation by deduction at the source, and which are not taxable under any other Case or Schedule.

The following is an Illustration of the adjustment of the Profit and Loss Accounts of a trader for Income Tax purposes, worked under both methods :—

Illustration.

The following is the Profit and Loss Account of Charles Clarke & Co., for the year 1932. Accounts for Income Tax purposes are required showing the Assessment for the fiscal year 1933-34.

PROFIT AND LOSS ACCOUNT				
Dr	For the Year ended 31st December, 1932			Cr
To Rent	£			£
" Salaries	40	By Gross Profit from Trading		
" Trade Expenses	390	Account		1,400
" Bad Debts	145	Discount Receivable		84
" Discount payable	68			
" Income Tax	152			
" Partner's Salary	31			
" Bank Interest	100			
" Interest on Capital	10			
" Net Profit	75			
	473			
	<u>£ 1,484</u>			<u>£ 1,484</u>
		By Net Profit		473

Dr. PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX. Cr

To Balance, Assessable Profit	£ 679	By Net Profit as per above Account	473
		„ Income Tax	31
		„ Partner's Salary	100
		„ Interest on Capital	75
	<u>£679</u>		<u>£679</u>
		Assessment 1931-34	.. £679

Notes to Illustration.

- (1) **INCOME TAX.**—Income Tax cannot be allowed as a deduction for Income Tax purposes, being legally an appropriation of the profits and not a charge thereon. The deduction of Income Tax is specifically prohibited by the rules of Schedule D.
- (2) **PARTNER'S SALARY**—This is not allowed as a deduction, inasmuch as it is merely an adjustment of the rights of the partners as between themselves, and is regarded as an appropriation of profits.
- (3) **BANK INTEREST**—This item is allowed as an expense because it is not “Annual Interest.” (It is an exception to the general rule that Income Tax on interest is collected at the source.) The banks must return such interest as part of their own profits.
- (4) **INTEREST ON CAPITAL**—This item is charged for two reasons—
 - (a) To ascertain what profit is made by the business after charging a reasonable amount for the use of the capital employed therein; and
 - (b) To adjust the rights of the partners as between themselves as regards capital.

It will be seen from the above remarks that the item is really an appropriation of the profits and not a charge, and from an Income Tax point of view is regarded in precisely the same light as partners' salaries.

The alternative though unusual method of working the above Illustration is as follows :—

INCOME TAX.

Dr PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX. Cr.

To Rent	£ 40	By Gross Profits	£ 1,400
„ Salaries	390	„ Discount Receivable	84
„ Trade Expenses	145		
„ Bad Debts	68		
„ Discount Payable	152		
„ Bank Interest	10		
„ Assessable Profit	679		
	<u>£ 1,484</u>		<u>£ 1,484</u>
	Assessment 1933-34		£679

Note to Illustration.

Of the two methods given for ascertaining the assessable profits for Income Tax, the first method is in the majority of cases preferable and is that invariably followed in practice. Instead of being set out in account form, the adjustment is more often made by addition and subtraction, thus—

Net Profit per Accounts	£473
Add Income Tax	31
Partner's Salary	100
Interest on Capital	75
Adjusted Profit	<u>£679</u>

It is usual in practice when submitting accounts to Inspectors of Taxes to submit copies of the Profit and Loss Account as shown by the books, and to adjust these in accordance with the first method, as in this way the Inspector can see at a glance what adjustments have been made.

In the case of sole traders and partnerships, where the auditors do not give a “clean” certificate indicating that a complete audit has been made, the following form of certificate is usually required to be completed and returned to the Inspector of Taxes in support of the accounts :—

SCHEDULE D.

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INCOME TAX. ✓

Name of Concern.....

Accounts for..... months ended..... 193....

- (1) Were all transactions relating to the business correctly entered in the books of account produced to Messrs.....? (1)
- (2) Did any Reserves or Suspense Accounts exist at..... that are not separately shown on the face of the Balance Sheet supplied to the Inspector of Taxes? If so, please give particulars. (2)
- (3) Are the amounts shown as Purchases in the accounts supplied to the Inspector of Taxes restricted to the cost of goods (a) sold and included in Sales in the Trading Account or (b) forming part of the Stock of which the value is shown in the Balance Sheet? (3)
- (4) (a) Was the whole of the Stock-in-Trade of the business (wherever situated) on..... shown in the Stock Sheets produced to Messrs.....? (4) (a)
- (b) On what basis precisely was this Stock valued? (b)
- (c) Was this basis the same as that hitherto adopted? (c)
- (d) What was the full value of the Stock on the basis stated above? (d)
- (e) Please state particulars of any deductions that have been made from the full value of the Stock in arriving at the value shown in the Balance Sheet supplied to the Inspector of Taxes. (e)

I hereby certify that the above statements are true to the best of my knowledge and belief.

(To be signed by the Proprietor
or by the Precedent Acting
Partner in a firm, or by the Sec-
retary of a Limited Company.)

.....Signature.

No. 81.

.....Date

In the case of sole traders in particular, it is sometimes found that items not charged in the accounts are permissible deductions, *e.g.*, renewals may have

been capitalised. An adjustment must be made. In the case of companies, it is not unusual to find in preliminary expenses some items which would be allowed, *e.g.*, the cost of books of account, etc.

The following is an Illustration of the adjustment of the Profit and Loss Accounts of a Limited Company for Income Tax purposes.

Illustration.

The following is the Profit and Loss Account of the Wholesale Trading Co., Ltd., for the year 1932. A computation for Income Tax purposes is required, showing the Assessment for the fiscal year 1933-34. The Claim for Wear and Tear is admitted at £250, Renewals of Furniture for the year are £27, and have been capitalised

<i>Dr</i>	PROFIT AND LOSS ACCOUNT		<i>Cr.</i>
	£		£
To Trade Expenses	2,250	By Gross Profit	4,006
„ Annuity	200	„ Dividends received	120
„ Depreciation of Plant	300	<i>(less tax)</i>	
„ „ „ Furniture	51	„ Bank Interest received (Gross)	95
„ Rent	500	„ Balance being Loss	6,250
„ Income Tax	1,140		
„ Loss on Sale of Investments	30		
„ Loss by Embezzlement	400		
„ Debenture Interest	5,000		
„ Directors' Fees	500		
„ Income Tax on Directors' Fees	100		
	£10,471		£10,471

Dr PROFIT AND LOSS ADJUSTMENT ACCOUNTS FOR INCOME TAX *Cr*

To Loss as per Accounts	6,250	By Annuity	£ 200
„ Dividends Received	120	Depreciation of Plant	300
„ Bank Interest Received	95	„ „ Furniture	51
„ Renewals of Furniture	27	Income Tax	1,140
„ Balance, being Assessable Profits	229	Loss on Investments	30
		Debenture Interest	5,000
	<u>£6,721</u>		<u>£6,721</u>

Profits, 1932	£229
Less Claim for Wear and Tear, 1933-34	250
Assessment 1933-34	Nil ✓
Assessment 1933-34, Case III, Schedule D	£95
Wear and Tear carried forward to 1934-35	£21 ✓

NOTE—(As will be seen later—Chap. VI, § 6—an assessment will be raised under Rule 21, General Rules, on the amount of the debenture interest paid in 1933-34 in so far as it is not covered by income taxed at source or under other Schedules or Cases.)

Notes to Illustration.

- (1) ANNUITY.—As an annual charge payable out of profits, tax must be deducted at the time of payment. The annuity is therefore not allowed as a deduction.
- (2) RENEWALS OF FURNITURE.—These are allowed (provided no wear and tear allowance has been granted thereon), but the depreciation on furniture must be written back.
- (3) LOSS ON SALE OF INVESTMENTS.—This is regarded as a loss of capital, and therefore cannot be charged. If it is a speculation it is looked upon as a casual loss wholly unconnected with the trade or business.
- (4) LOSS BY EMBEZZLEMENT.—This was at one time disallowed, on the ground that it was not a loss wholly and exclusively incurred for the purpose of trade, etc., but it is now recognised as being a proper deduction, being a risk incidental to trade, although a loss due to defalcations by a managing director would not be allowed (*Curtis v. Oldfield* (1925), 9 T.C. 319).
- (5) DEBENTURE INTEREST.—Income Tax should be deducted from the interest on debentures when paying it, and therefore the company must duly account for the amount deducted by keeping the interest in charge.
- (6) DIRECTORS' FEES.—These are assessed under Schedule E. Normally, the directors are assessed personally, but in cases where the company pays Income Tax on the fees, such payment of tax is an addition to the fees (*see* Chap. XI, § 9). The combined amount of the fees and the Income Tax thereon is therefore allowed as a charge in the company's accounts. The same remark applies to the directors' percentage of profits.
- (7) DIVIDENDS RECEIVED LESS TAX.—As tax has already been paid in respect of the dividends, the company will write them back in their adjusted accounts for Income Tax purposes to prevent a double assessment. As only the net amount has been credited to the Profit and Loss Account, only the net amount must be written back.
- (8) BANK INTEREST RECEIVED GROSS.—As this is assessable under Case III, Schedule D, it is written back in the adjusted accounts. Where, however, such interest is a common credit in the accounts it is frequently agreed with the Inspector to leave it in charge in the accounts in order to avoid the cumbersome adjustments necessitated by the numerous changes in the amount on deposit (*see* Chap. IV, § 6 (f)). If a trading receipt, then the interest can be assessed under either Case I or Case III.

§ 5.—Treatment of Rent under Schedule D.

In the official list of deductions allowed, it will be observed that the rent of premises used solely for purposes of business, and not as a place of residence, can be charged as a business expense. Provision is also made whereby the annual value of such premises, according to the amount on which tax has been paid under Schedule A, may be charged in lieu of rent.

It will thus be seen that the occupier of business premises has the option of charging either the actual rent paid, or the Net Schedule A assessment, whichever is more advantageous to him. The reason for this option is, that as an official valuation has been placed upon the premises, and tax on the value is payable under Schedule A, the occupier is entitled to charge that amount in his accounts to prevent a possible double assessment on the whole, or a portion, of the net annual value.

Tax under Schedule A is usually collected in the first instance from the tenant, who recoups himself by deducting the amount so paid from the next succeeding quarter's rent. As, however, the tenant cannot reimburse himself to a greater extent than tax on the actual amount of the rent paid, he has to bear the tax on the difference between the Net Schedule A assessment and the rent paid, where the former is greater than the latter.

In the adjusted accounts for Income Tax, the tenant is not entitled to charge as a business expense any portion of the Schedule A tax which he has had to bear himself, but on the other hand he is allowed to charge the full Net Schedule A assessment, provided the rent paid, if any, is written back. The Inland

Revenue Authorities therefore receive Income Tax on the full Net Schedule A assessment of the premises, which is borne partly by the owner and partly by the occupier.

Illustration.

The following is the Profit and Loss Account of George Barnes for the year ended 31st March, 1933. The trade premises are held on lease, at a rent of £160 per annum. A computation for income tax purposes is required, showing the assessment for the fiscal year 1933-34. The premises are assessed under Schedule A at £200 net.

PROFIT AND LOSS ACCOUNT			
Dr		Cr	
For the year ended 31st March, 1933			
	£		£
To Trade Expenses	155	By Gross Profit from Trading Account	1,138
„ Salaries	195		
„ Rent	160		
„ Income Tax, Sch D	31		
„ Income Tax, Sch A	10		
„ Bad Debts	81		
„ Interest on Capital	50		
„ Net Profit	456		
	<u>£ 1,138</u>		<u>£ 1,138</u>
		By Net Profit	£456

PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX.			
Dr		Cr	
	£		£
To Schedule A Net Annual Value	200	By Net Profit as per Accounts	456
„ Assessable Profit	507	„ Rent	160
		„ Income Tax, Sch. D	31
		„ Income Tax, Sch. A	10
		„ Interest on Capital	50
	<u>£707</u>		<u>£ 707</u>

Assessment 1933-34.. £507

Notes to Illustration.

- (1) RENT.—Where the Net Schedule A assessment is charged in lieu of rent, the actual rent paid should be written back and the Net Annual Value debited. This method is clearer than merely debiting the difference between the two figures, as it enables the Inspector to verify the Net Annual Value.

- (2) INCOME TAX UNDER SCHEDULE A.—Income Tax is one and the same tax, whether it is collected under Schedules A, B, C, D or E. It is regarded as an appropriation of profits, and therefore cannot be charged. The above item represents the proportion of the tax, in respect of the premises, which the occupier is not able to recoup from the landlord. Tax at 5/- in the £ for 1932-33 paid during the year was on £200, amounting to £50. The actual rent paid amounted to £160, and in consequence, the occupier could not deduct more than 5/- in the £ on that amount, viz., £40. (The balance of £10 represents the proportion of tax which he himself has borne.)

The excess of the Net Annual Value (£200) over the rent paid (£160), i.e., £40, measures the tenant's beneficial occupation of the premises, and that amount must be included as part of his Statutory Total Income, against which he is entitled to the appropriate personal and similar allowances. In arriving at the tax payable by him, he is, of course, credited with having paid the tax of £10 thereon.

The transactions will show in the books of the business as follows:—

<i>Dr</i>		RENT ACCOUNT.			
1932		£	s d	1933	£
une 24	To Cash—Quarter's Rent	40	0 0	Mar 31	By P & L Account . . . 160
ep. 29	„ Cash—Rent	40	0 0		
ec. 25	„ Cash—Rent ..	40	0 0		
1933					
an. 22	„ Sch A tax chargeable to Landlord 5/- in £ on £160 Rent paid	40	0 0		
		<u>£160</u>	<u>0 0</u>		<u>£160</u>

<i>Dr.</i>		SCHEDULE A—TAX ACCOUNT			<i>Cr.</i>				
1933.		£	s	d	1933	£	s	d	
Jan. 22	To Cash—				Jan 22	By Rent Account—			
	Sch. A tax, 5/- in £ on £200 being Net Assessment ..	50	0	0		Sch. A tax chargeable to Landlord, 5/- in £ on £160 Rent, being less than Net Annual Value	40	0	0
					.. P & L Account ..	10	0	0	
		£50	0	0			£50	0	0

It has been assumed that, as is usual in practice, the tax was paid later than its due date.

Where a business occupies a number of leasehold warehouses for the purposes of its trade, and closes down one of them for motives of economy, the lease rent of that warehouse is still a proper deduction in the accounts, being laid out exclusively for the purpose of trade (*C.I.R. v. Falkirk Iron Co.* (1933), 12 A.T.C. 235).

In the case of a business, *e.g.*, a bank, which owns the buildings in which the business is carried on, and portions of the buildings are occupied as residences by managers and agents, the annual value of the whole premises may be deducted in arriving at the liability to assessment (*Russell v. Aberdeen Town and County Bank* (1888), 2 T.C. 321).

Where a firm owns business premises, and uses them exclusively for business purposes, the Net Schedule A assessment may be debited to the Profit and Loss Account for Income Tax purposes. This obviates a double assessment, which would otherwise arise, since the firm would be paying as landlords on the full assessment under Schedule A, and would also be paying tax under Schedule D on a correspondingly larger profit than if the premises had been rented. In the case of MILLS, FACTORIES AND OTHER SIMILAR PREMISES situate within the United Kingdom the GROSS instead of the net ANNUAL VALUE is allowed (Rule 5, Cases I and II); if situate outside the United Kingdom a sum equal to one-sixth of the annual value can be deducted if the occupier is the owner (Finance Act, 1919, § 18). In the case of premises abroad used for business purposes, the rent paid is an admissible deduction. Even if the

rent is dependent on the amount of profits, it is allowable (*Union Cold Storage Co. v. Adamson* (1931), 16 T.C. 293). (But if the premises are owned, see § 2 (f) *supra*.)

Where a firm owning its business premises charges against the Profit and Loss Account a hypothetical amount in lieu of rent, based possibly on a percentage of the estimated value of the premises, that amount must be written back and the Net Schedule A assessment charged in lieu thereof.

It must be remembered that the Schedule A assessment exhausts the taxable capacity of the property in land and buildings, and if the land or buildings are let at a profit rental, the difference between the rent receivable and the annual value is not chargeable to tax. Attempts are frequently made to assess such profits, but these should be strongly resisted.

In *Fry v. Salisbury House Estate* ((1930), 99 L.J.K.B., 403), a company let out offices at rents in excess of the Net Annual Value of the premises, and provided certain services, *e.g.*, housekeeper, lift, etc. It was admitted that the profit derived from the provision of services was chargeable to tax under Schedule D as a business, but the House of Lords held that the profits from letting *simpliciter* were covered by the Schedule A assessments and no assessment could be raised on the excess of the rent received over the Net Annual Value. If, however, premises are let *furnished*, the profit thereon is assessable under Case VI, Schedule D, deductions being allowed for the expenses, including the Net Annual Value, appropriate to the property so let.

Where only part of the premises is sublet, it becomes more difficult to make the appropriate adjustments, but the following rules should be followed:—

Eliminate the rent receivable from the Profit and Loss Account, at the same time eliminating the proportion, applicable to the portion sublet, of the charges for rent or annual value (whichever is charged), and for any other expenses covered by the rent receivable, *e.g.*, rates, lighting, etc.

Illustration.

The following is the Profit and Loss Account of M., who sublets one-fourth of his business premises at a rent including rates, lighting and heating. The Net Annual Value of the whole premises is £200.

PROFIT AND LOSS ACCOUNT			
Dr	For the Year ended 31st December, 1932		Cr
To Rent	£ 180	By Gross Profit	£ 1,226
„ Rates	100	„ Rent Receivable	100
„ Lighting and Heating	60		
„ General Expenses	600		
„ Mortgage Interest	20		
„ Repairs to Premises	16		
„ Depreciation	50		
„ Net Profit	300		
	<u>£1,326</u>		<u>£1,326</u>

Dr	PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX		Cr
To Rent Receivable	£ 100	By Net Profit	£ 300
„ Net Annual Value	£200	„ Rent	180
„ Less Proportion applicable to premises sublet ($\frac{1}{4}$)	50	„ Rates ($\frac{1}{4}$)	25
	150	„ Lighting and Heating ($\frac{1}{4}$)	15
„ Adjusted Profit	344	„ Mortgage Interest	20
		„ Repairs ($\frac{1}{4}$)	4
		„ Depreciation	50
	<u>£594</u>		<u>£594</u>

Note to Illustration.

Since only three-fourths of the business premises are used for the purpose of the business, only three-fourths of the Net Annual Value, rates, lighting and heating and repairs are allowed as a deduction in arriving at the business profits for assessment, and

the remaining quarter of such expenses is therefore written back. It may be the fact that the repairs, etc., applicable to the premises sub-let represent some other fraction of the whole; if so, the amount in fact spent on the sub-let premises must be written back. The whole of the rent received on the part sub-let is eliminated from the profit, as tax under Schedule A has been paid on the Net Annual Value of the whole of the premises, and (the profit rental) is not assessable.

Where the annual value of the portion sublet cannot be conveniently ascertained, the rent receivable is left in charge, and the whole annual value, etc., charged. This course may, in practice, be adopted in all cases if the taxpayer so elects and consistently adheres to it. The formal adjustment, however, is often advisable.

Where part of the premises is used for private purposes, *e.g.*, where the occupier lives over his shop, a fair proportion of the rent or annual value must be added back in respect of such part of the premises. This proportion is generally one-third, but the proportion is adjusted to meet the facts; *e.g.*, one-third would obviously be excessive in the case of an hotel. In such cases, due adjustment must also be made for a proportion of rates, insurance, lighting, heating, etc., applicable to the part privately occupied.

§ 6.—Interest on Loans.

It has been explained that in the case of annual interest on loans, the Income Tax is collected from the person paying the interest, who recoups himself by deducting Income Tax at the appropriate rate from the interest, as and when he pays it.

In arriving at the profits of a trade or business, annual interest is therefore not allowed as a deduction,

but it should be noted that if the profits and other income charged for the year (whether by deduction at source or by direct assessment) are insufficient to cover such interest, it is assessable apart from any question of profit or loss on trading.

Interest other than annual interest, *e.g.*, interest on short loans from bankers and others, is payable without deduction of tax and is allowed as an expense, the assessment being made upon the recipient. Where the recipient is non-resident and has no agent here, no assessment is made.

In the case of *Farmer v. Scottish North American Trust, Ltd.* ((1912), A.C. 118), it was decided by the House of Lords that the deduction of such interest on temporary loans was admissible, the interest paid being expenditure by means of which the company procured the use of the thing by which they made a profit.

In a later case—*The European Investment Trust Co. Ltd. v. Jackson* ((1932), 11 A.T.C. 321)—it was held that interest on advances from an American company to finance hire purchase transactions was in the nature of interest on fixed working capital, and, whether short or annual interest, was expenditure in respect of capital and consequently was an inadmissible expense for purposes of Income Tax.

(a) Deduction of Tax.

Under Rule 19, General Rules applicable to all Schedules, it is provided that in respect of all annuities, yearly interest of money, or (other ANNUAL PAYMENTS) PAYABLE OUT OF PROFITS OR GAINS BROUGHT INTO CHARGE TO TAX, the person liable to make such annual payment shall be assessed and charged to tax as if

no such payment was made, but is authorized to DEDUCT AND RETAIN TAX when making such payment. The recipient of the annual payment is bound to allow the deduction and to accept the net sum in satisfaction of the amount of the annual payment.

The right to deduct tax on interest paid out of "profits brought into charge to tax" refers to yearly interest only, although it does not matter whether the actual payment is made at more frequent intervals than a year (Rule 19 (1)). The question of "yearly interest" has been the subject of a number of High Court decisions, and the legal position is well summarised in *The Commissioners of Inland Revenue v. Sir Duncan Hay, Bart.* ((1924), 8 T.C. 636). In this case unsecured advances which varied in amount had been in continuous existence for a number of years, the lenders being the respondent's solicitors. There was no written agreement relating to the advances, and interest was charged annually at a rate which fluctuated with the Bank Rate. It was held that the interest on the advances was "yearly interest."

From a consideration of the opinions expressed in above case, the following propositions appear to be established :—

(1) Interest payable in respect of (short loans) is not yearly interest (*Goslings and Sharpe v. Blake* (1889), 23 Q.B.D. 324).

(2) In order that the interest payable may be held to be yearly interest in the sense of the Income Tax Acts, the loan in respect of which interest is paid must have a measure of permanence.

(3) The loan must be in the nature of an investment (*Garston Overseers v. Carlisle* (1915), 3 K.B. 381).

(4) The loan must not be one repayable on demand.
(*Gateshead Corporation v. Lumsden* (1914), 2 K.B. 883).

(5) If in point of fact the interest is payable yearly it
✓ may still be yearly interest even though the rate may
fluctuate from time to time.

It will thus be seen that it is not essential that the rate of interest should be fixed and that the chief element is the measure of permanence. Some difficulty may be encountered in practice in "borderline" cases, but it is at least certain that if the loan or the deposit is made for a fixed period of not less than one year, the interest is "yearly interest" and tax is properly deductible. This is borne out by the general custom of banks only to deduct tax on deposit interest in cases of fixed deposits, no deduction being made where the deposit is repayable on demand or at short notice,

The only other statutory authority (outside the Rules of Schedule A), under which tax can be deducted from interest paid is found in Rule 21, General Rules, All Schedules, as amended by § 26, Finance Act, 1927, under which any person paying any interest of money, annuity or other ANNUAL PAYMENT or patent royalty NOT PAYABLE or not wholly payable OUT OF PROFITS OR GAINS BROUGHT INTO CHARGE TO TAX MUST DEDUCT TAX at the time of payment, AND ACCOUNT FOR IT to the Inland Revenue.

Any person who refuses to allow any deduction of tax authorised by the Income Tax Acts is liable to a penalty of £50. Every agreement for payment of interest, rent, or other annual payment in full without allowing any such deduction is void (Rule 23, General Rules, All Schedules) as regards that stipulation. An agreement to pay "interest

(or rent) at such a rate (or of such an amount) as, after deducting tax at the rate or rates for the time being in force, shall leave a clear annual rate (or amount) of” does not contravene Rule 23, and is valid.

The provisions of Rule 21 (as amended) are reproduced in view of their importance :—

21.—(1) Upon payment of any interest of money, annuity, or other annual payment charged with tax under Schedule D, or of any royalty or other sum paid in respect of the user of a patent, not payable, or not wholly payable, out of profits or gains brought into charge, the person by or through whom any such payment is made shall deduct thereout a sum representing the amount of the tax thereon at the rate of tax in force at the time of the payment.

(2) Where any such payment as aforesaid is made by or through any person, that person shall forthwith deliver to the Commissioners of Inland Revenue, for the use of the Special Commissioners, an account of the payment, or of so much thereof as is not made out of profits or gains brought into charge, and of the tax deducted out of the payment or out of that part thereof, and the Special Commissioners shall assess and charge the payment of which an account is so delivered on that person.

(2A) The Special Commissioners may, where any person has made default in delivering an account required by this Rule, or where they are not satisfied with the account so delivered, make an assessment according to the best of their judgment, and if any person neglects or refuses to deliver an account so required, he shall forfeit the sum of one hundred pounds over and above the tax chargeable.

(2B) All the provisions of the Income Tax Acts relating—

(a) to persons who are to be chargeable with Income Tax and to Income Tax assessments ,

(b) to appeals against such assessments ;

(c) to the collection and recovery of Income Tax ;

(d) to cases to be stated for the opinion of the High Court, shall, so far as they are applicable, apply to the charge, assessment, collection and recovery of Income Tax under this Rule, and the Special Commissioners shall, for the purpose of an assessment under this Rule, have any powers of a surveyor, and, for the purpose of the representation of the Crown before

the Special Commissioners on any appeal under this Rule, any person nominated in that behalf by the Commissioners of Inland Revenue shall have all such powers as a surveyor has at and upon the determination of an appeal.

(3) The amount of annuities which an assurance company carrying on the business of granting annuities is entitled, for the purposes of this Rule, to treat as having been paid out of profits or gains brought into charge to tax, shall not exceed the amount of the taxed income of its annuity fund.

Copyright royalties are not charged to tax by deduction except where the usual place of abode of the owner of the copyright is not within the United Kingdom, when Rule 21 applies (except in respect of copies of works exported for distribution outside the United Kingdom) (§ 25—1927). In such cases the agent paying the royalty is made liable for deducting the tax on the amount of the royalty as reduced by any agent's commission (§ 18—1930). Since the tax in such cases is always collected under Rule 21, the copyright royalties are still deductible in the Profit and Loss Account of the publisher, even where he is the agent for the purposes of deduction and payment of the tax.

It is of the utmost importance that the reader should appreciate that by the expression "profits or gains brought into charge to tax" is meant the statutory income of the year, *before* deducting annual charges, irrespective of the amount of the actual profits. Thus, in *Attorney-General v. Metropolitan Water Board* ((1927), 13 T.C. 294), the Board were assessable on the profits of the preceding year. For the year 1921-22 they made no profits, and had therefore no assessable profits for 1922-23. During 1922-23, however, they received profits from various sources on which they suffered by deduction or otherwise

£8,027 tax. For 1922-23 their profits amounted to £2,481,085, which formed the basis of their assessment for 1923-24. During 1922-23, the Board paid interest on debentures, stock, etc., amounting to £1,668,351, from which they deducted tax.

The Board sought to retain the tax so deducted as coming under Rule 19, contending that it was payable out of profits brought into charge (*viz.*, out of the £2,481,085 made in 1922-23). It was held that the Board was liable under Rule 21 to pay over the tax deducted, less the £8,027 suffered in 1922-23, since the profits brought into charge to tax were the *statutory* profits *viz.*, Nil, and not the *actual* profits made during the year of assessment. (It was as a result of this case that § 19, 1928, was enacted—see Chap. VII, § 3.)

Conversely, if a company in the year ended 31st March, 1931, made a profit of £200,000, but in the year ended 31st March, 1932, made a profit of only £40,000, its “profits and gains brought into charge to tax” for 1931-32 would be £200,000, *i.e.*, the assessment under Schedule D, Case I, plus any other statutory profits under other Cases or Schedules.

One must not look for the fund of “profits or gains brought into charge to tax” within the meaning of Rule 19 (1) outside the year in which the interest was paid and the tax deducted. The profits or gains brought into charge to tax mean the profits or gains as assessed and taxed in the year of charge, and do not include any unexhausted balance of profits or gains actually brought into charge to tax in previous years (*Luipaard's Vlei Estate and Gold Mining Co. v. C.I.R.* (1930), 99 L.J.K.B. 330).

Illustration.

A.'s profits from his business, for the years ended 30th September, 1930, 1931 and 1932, were respectively £5,000, £150 and £4,000. His only other income was the Net Annual Value of his house, £100.

✓ Each year he paid £600 loan interest.

Assessments :—	1931-32.	1932-33.	1933-34.
Case I, Schedule D ..	£5,000	£150	£4,000
Schedule A	100	100	100

Profits or gains brought into charge to tax	£5,100	£250	<u>£4,100</u>
---	--------	------	---------------

	1931-32	1932-33	1933-34.
A. therefore deducts tax under Rule 19, General Rules, on	£600	£250	.. £600
but under Rule 21, General Rules, on .. .. .	..	..	£350

i.e., although he made an *actual* profit in 1932 of £4,000, he had only £250 "brought into charge to tax" in that year, and must account under Rule 21, General Rules, for the tax on the balance of the annual charge. If the loan interest were paid wholly and exclusively for the purposes of the business, it could be set-off against the 1933-34 assessment on the business under Case I, Schedule D, reducing it to £3,650 under § 19, 1928 (*see* Chap. VII, § 3).

(b) Treatment of Interest where the Payer makes a Profit.

The following illustrations show the treatment of annual interest on loans where the payer makes a statutory profit.

Illustration.

A., who has no private income, submits the following Profit and Loss Account to his professional accountant, and requests him to prepare Adjusted Accounts for Income Tax, showing the amount upon which Income Tax is payable for 1933-34. The interest payable was constant each year

INCOME TAX.

PROFIT AND LOSS ACCOUNT			
Dr		For the Year ended 31st December, 1932	Cr
To Rent	£ 120	By Gross Profit	£ 2,800
.. Office Expenses	660		
.. Salaries	276		
.. Interest on Loan	180		
.. Net Profit	1,564		
	<u>£2,800</u>		<u>£2,800</u>

Dr PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX			
			Cr
To Assessable Profit	£ 1,744	By Net Profit	£ 1,564
		.. Interest on Loan	180
	<u>£1,744</u>		<u>£1,744</u>
		Assessment 1933-34	<u>£1,744</u>

A. will therefore pay tax on £1,744 in 1933-34, but will recoup by deduction the tax on the interest he pays in that year (Rule 19). He will thus ultimately *bear* tax only on his net income after deducting the interest, although he must *account* to the Revenue for tax on the gross income before deducting the interest

(c) Treatment of Interest where the Payer makes a Loss.

The following Illustration shows the treatment of annual interest on loans where the payer makes a "statutory" loss.

Illustration.

X. & Co., traders, submit the following Profit and Loss Account to their professional accountant, and request him to prepare Adjusted Accounts for Income Tax, showing the amount (if any) upon which Income Tax is payable for 1933-34.

PROFIT AND LOSS ACCOUNT			
Dr		For the Year ended 31st December, 1932.	Cr.
To Rent	£ 120	By Gross Profit	£ 720
.. Office Expenses	660	.. Net Loss	516
.. Salaries	276		
.. Interest on Loan	180		
	<u>£1,236</u>		<u>£1,236</u>

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<i>Dr</i> PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX		<i>Cr</i>
To Net Loss	£ 516	By Interest on Loan 180
		„ Adjusted Loss 336
	<u>£516</u>	<u>£516</u>

The result is an adjusted loss, giving a “nil” assessment for 1933-34, but nevertheless X. & Co. will be assessed on the amount of the interest on loan PAID DURING THE YEAR 1933-34 (which will not necessarily be £180) in order to collect from them the tax which they deduct when paying the interest (Rule 21). (See Chap. VII, § 3 as to relief obtainable under § 19, 1928, against future assessments in respect of such interest.)

(d) Where a Loss is converted into a Profit through writing back Interest on Loans.

It may happen that a Profit and Loss Account shows a loss after charging interest on loan, which loss, however, is converted into a statutory profit as soon as the interest on loan is written back.

In such cases the statutory profit, based on the adjusted profit for the preceding year, may very possibly be less than the amount of the interest payable in the current year.

Tax, however, will be levied at the standard rate on the amount of the interest.

At first glance this would seem unjust, but it must be remembered that the payer has deducted tax from the interest, and must therefore duly account for the full amount thereof.

Illustration.

PROFIT AND LOSS ACCOUNT					
Dr	For the Year ended 31st December, 1932		Cr		
To Rent	£	120	By Gross Profit	£	1,086
„ Office Expenses		680	„ Net Loss		150
„ Salaries		276			
„ Interest on Loan		180			
		<u>£1,236</u>			

Dr. PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX. Cr.			
To Net Loss	£ 150	By Interest on Loan	£ 180
„ Adjusted Profit	30		
	<u>£180</u>		<u>£180</u>
		Assessment 1933-34	<u>£30</u>

Note to Illustration.

It will be seen that the loss as shown by the Profit and Loss Account is converted into a profit by writing back the interest on loan. The assessment for 1933-34 is, however, less than the amount of the interest payable in the current year (assuming the interest to remain constant from year to year), and therefore tax is levied on the £180 interest at the standard rate. If this were not done, it would result in the firm setting off a loss on trading against the profits of some other person, and retaining tax for which they were accountable to the State. The assessment is under Schedule D, Case I, on the £30 covered by Rule 19, the tax on remaining £150 being assessed under Rule 21.

If any other statutory income were available, the £150 would, of course, be reduced thereby.

(e) Where the Interest varies in Amount.

A variation in the amount of the interest each year may have considerable effect on the taxpayer, owing to the different methods of assessing business profits and interest.

If the amount of interest goes up, the profits of the business are increased by the amount of the interest on loan paid in the previous year. (The net statutory income of the individual owning the business, for purposes of allowances and deductions is, however, the statutory profit as ascertained above, less the interest on loan payable for the year of assessment.)

It thus happens that by deducting from the statutory profits (which have been increased to the extent of the previous year's interest) the interest for the

current year (which figure is greater in amount than that of the previous year), the taxpayer's earned income will be adversely affected.

Illustration.

PROFIT AND LOSS ACCOUNT			
For the Year ended 31st March, 1933			
Dr			Cr
To Rent	£ 120	By Gross Profit	£ 1,096
„ Office Expenses	300		
„ Salaries	210		
„ Interest on Loan	300		
„ Profit	706		
	<u>£1,096</u>		<u>£1,096</u>

PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX.			
Dr			Cr.
To Assessable Profits	£ 1,006	By Net Profit	£ 706
		„ Interest on Loan	300
	<u>£1,006</u>		<u>£1,006</u>
		Statutory Profit 1933-34 .	£1,006

Assuming X., the owner of the business, has no other source of income, the assessment will vary according to the amount of interest payable for the year of assessment

Assuming the interest payable for the year to 5th April, 1934, is £400, then the assessment will be as follows :—

Interest chargeable at standard rate ..	£400
Balance, being earned income (£1,006—	
400)	£606
Less One-fifth	121
	<u>485</u>

Whereas if the interest payable is only £100, the earned income would be £906, less One-fifth (£181) = net £725.

Assuming X has dividend income (taxed at source) amounting to £250, and the interest payable to remain at £400, the Earned Income Allowance will be as follows :—

Earned Income	£1,006
Deduct : Excess of Annual Charge over	
unearned income (£400—250) ..	150
	<u>856</u>
Allowance, one-fifth	171 [✓]

(f) Interest received Gross.

Interest on deposits, discounts on Treasury Bills, interest received gross on Registered or Inscribed $3\frac{1}{2}\%$ War Stock, and small dividends on other Government Securities received gross, are assessable under Case III of Schedule D on the basis outlined in Chap. V, § 1, provided the source of income has not ceased prior to the year of assessment.

In the ordinary way, trade interest, interest on deposit, etc., is brought in for Income Tax purposes in the accounts of the business, but where any interest is separately assessed as above indicated, it must be excluded from the profits brought into assessment.

§ 7.—Change in date to which Accounts are made up, etc.

It has already been stated that the normal basis of assessment under Cases I and II is the profits of the preceding year. By § 34, Finance Act, 1926, as amended by § 14, Finance Act, 1930, the rules for ascertaining the profits to be taken are as follows :—

34.—(1) Where in the case of any trade, profession or vocation, or of the occupation of any land occupied solely or mainly for the purposes of husbandry, or of the occupation of any woodlands, an account has or accounts have been made up to a date or dates within the period of three years immediately preceding the year of assessment—

(a) if an ACCOUNT WAS MADE UP TO A DATE WITHIN THE YEAR PRECEDING THE YEAR OF ASSESSMENT, and that account was the ONLY ACCOUNT made up to a date in that year, and was FOR A PERIOD OF ONE YEAR, BEGINNING either at the COMMENCEMENT OF THE TRADE, profession, vocation or occupation, OR AT THE END OF THE PERIOD ON THE PROFITS OR GAINS OF WHICH THE ASSESSMENT FOR THE LAST PRECEDING YEAR OF ASSESSMENT WAS TO BE COMPUTED, the profits or gains of the year ending on that date shall be taken to be the profits or gains of the year preceding the year of assessment,

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(b) in any case to which the provisions of paragraph (a) do not apply the Commissioners of Inland Revenue shall decide what period of twelve months ending on a date within the year preceding the year of assessment shall be deemed to be the year the profits or gains of which are to be taken to be the profits or gains of the year preceding the year of assessment.

(2) Where the Commissioners of Inland Revenue have given a decision under paragraph (b) of the preceding subsection and it appears to them that in consequence thereof the tax for the last PRECEDING YEAR OF ASSESSMENT (not being a year prior to the year 1927-28) in respect of the profits or gains from the same source should be COMPUTED on the profits or gains of a CORRESPONDING PERIOD, they may give directions to that effect and an assessment or additional assessment or repayment of tax shall be made accordingly.

(3) An appeal shall lie against any assessment or additional assessment or in respect of any repayment of tax under subsection (2) of this section, and any such appeal shall be made to the General or Special Commissioners who shall consider the circumstances and grant such relief, if any, as is just, and their determination shall be final and conclusive, subject to the provisions of the Income Tax Acts relating to the statement of a case for the opinion of the High Court.

(4) In the case of the death of a person who, if he had not died, would, under the provisions of this section, have become chargeable to Income Tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators and shall be a debt due from and payable out of his estate.

To facilitate the above, § 35, Finance Act, 1926, provides :

35 —(1) Where in the case of any profits or gains chargeable under Case I, Case II, Rule 4 of Case III or Case VI of Schedule D it is necessary, in order to arrive at the profits or gains or losses of any year of assessment or other period, to divide and apportion to specific periods the profits or gains or losses for any period for which the accounts have been made up, or to aggregate any such profits or gains or losses or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation :

Provided that nothing in this section shall be construed as limiting the power of the General Commissioners with respect to the adjustment of an assessment under Rule 9 of the Rules applicable to Cases I and II of Schedule D.

(2) Any apportionment under this section shall be made in proportion to the number of months or fractions of months in the respective periods

In practice, fractions of months are usually ignored unless their inclusion would make an appreciable difference to the amounts involved.

The following illustrations show the application of the above rules. It must be added that in cases where the Board of Inland Revenue are called upon to exercise their powers under § 34 (1) (b), Finance Act, 1926, they usually select the period of twelve months ending on that date in the preceding year to which the taxpayer states he intends to make his date for making up his accounts in future, unless that date would give a ridiculous result.

Illustrations.

(1) A. commenced business on 1st February, 1929, making up his first accounts to 31st January, 1930. These accounts satisfy § 34 (1) (a)—1926, and form the basis of assessment for 1930–31. Similarly, the accounts for the year ended 31st January, 1931, satisfy the section and form the basis for 1931–32.

(2) R. Ltd. had in the past made up their accounts to 30th June. In 1930, they decided to amend the date to 31st December. Their profits were as follows —

Year ended 30th June,	1928	..	£12,000
" " " "	1929	..	£16,000
" " " "	1930	..	£9,000
Six months ended 31st Dec., 1930	..		£7,000
Year ended 31st December, 1931	..		£15,000

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1929-30	Preceding year's profits, <i>i.e.</i> , to 30th June, 1928	£12,000
1930-31	„ „ „ „ „ 1929	£16,000

1931-32 Since more than one account ends in the preceding year, the Commissioners of Inland Revenue must decide what period shall be taken as the basis. They would usually decide to take the twelve months ending 31st December, 1930, since 31st December is to be the accounting date in future, *i.e.*,

$$\frac{1}{12} \text{ths of } £9,000 + £7,000 = £11,500$$

In that case, they may amend the 1930-31 assessment on a corresponding basis, *i.e.*,

$$\frac{1}{12} \text{ths of } £16,000 + \frac{1}{12} \text{ths of } £9,000 = £12,500^{\dagger}$$

On the other hand, the Commissioners may select the twelve months to 30th June, 1930, £9,000, in which case no adjustment of the 1930-31 assessment can be made.

(The basis often adopted, however, is the average for two years of the period of eighteen months :—

18 months to 31st Dec., 1930	..	£16,000
24 months	$£16,000 \times \frac{2}{3}$	= £21,333
1931-32 Year to 31st Dec., 1930	..	£11,500
1930-31	$£21,333 - £11,500$	= £9,833

Although there is no mention of "averaging" in the Acts, § 34 (2), Finance Act, 1926, gives the Commissioners of Inland Revenue power to name a "corresponding period," but under § 34 (3), Finance Act, 1926, an appeal lies against their decision, and the General Commissioners or the Special Commissioners are empowered to give "such relief as is just" In certain cases a "corresponding period" of 12 months would give very inequitable results, and the average basis is sometimes adopted as being "just" if the General or Special Commissioners do not object).

1932-33 If in 1931-32 the Commissioners selected 31st December, 1930, as the relevant date, then the accounts for the year to 31st December, 1931, satisfy § 34 (1) (a) and form the basis of assessment £15,000

But if in 1931-32 the Commissioners selected the accounts to 30th June, 1930, then the 1931 account does not begin "at the end of the period on the profits or gains of which the assessment for the last preceding year of assessment was to be computed," and the Commissioners must select the relevant period.

NOTE.—The Commissioners would rarely adopt a date other than an accounting date.

(3) S. Ltd., made up accounts to 28th February until 1931, when 30th April was chosen as the date for future accounts.

The adjusted profits were as follows :—

Year ended 28th February,	1929	£6,000
" " " "	1930	£9,000
Fourteen months ended 30th April, 1931		£7,000
Year ended 30th April,	1932	£8,400

ASSESSMENTS

1929-30 Accounts for year to 28th February, 1929 . . £6,000

1930-31 " " " " " " 1930 . . £9,000

1931-32 Profits for such twelve months to a date in the preceding year as the Commissioners of Inland Revenue may decide. Probably twelve months to 28th February, 1931, i.e.,
 $\frac{1}{2}$ ths of £7,000 = £6,000

in which case no adjustment of the 1930-31 assessment is relevant. They would be unlikely to take 5th April, 1931 as the appropriate date.

1932-33 Profits for such twelve months to a date in the preceding year as the Commissioners may decide. They might elect to take twelve months to 28th February, 1932, or, more

probably in this case, twelve months to 5th April, 1932, *i.e.* (ignoring fractions of months)

$$\frac{1}{4} \text{th of } £7,000 + \frac{1}{2} \text{ths of } £8,400 = £8,200$$

Either choice would mean that for 1933-34 the Commissioners would have the right to choose their basis again.

NOTE.—There seems little doubt that the Commissioners can take into account a portion of profits for a year ending later than the end of the year of assessment.

1933-34 Year ended 30th April, 1932, would probably
now be chosen £8,400

§ 8.—New Businesses.

In respect of the early years of a business, special rules are provided for arriving at the assessments, and for allowing a measure of relief in cases where the profits of the second and third years of assessment fall short of the assessments on the statutory bases.

In the year of assessment in which the business is set up and commenced, the computation is made according to the rules applicable to Case VI (Rule 1 (2), Cases I and II), (*i.e.*, either on the full amount of the profits or gains arising in the year of assessment, or according to an average of such a period, not being a period greater than one year, as the case may require, and as may be directed by the Commissioners (Rule 2, Case VI and § 29 (2)—1926)).

In the year of assessment next following (*i.e.*, the second year of assessment) the computation is made on the profits or gains for one year from the period of the first setting up of the business (Rule 2, Cases I and II, and § 36 (1) and Fourth Schedule—1926). If the first account is for less than a year, then a due portion of the second account must be taken in

order to build up the profits of 12 months from the date of commencement (*Manson v. Perry's (Ealing) Ltd.* (1931), 16 T.C. 60).

Relief in the second and third years of assessment is provided by § 15—1930, *viz.* :—

15.—(1) In this section the expression “charged” means charged to Income Tax in respect of the profits or gains of a trade, profession or vocation, and the expressions “the second year of assessment” and “the third year of assessment” in relation to the charge of Income Tax in respect of the profits or gains of any trade, profession or vocation mean respectively the year next after and the year next but one after the year of assessment in which that trade, profession or vocation was set up or commenced.

(2) The person charged or liable to be charged shall be entitled, ON GIVING NOTICE IN WRITING TO THE INSPECTOR OF TAXES WITHIN TWO YEARS AFTER THE END OF THE SECOND YEAR OF ASSESSMENT TO REQUIRE THAT TAX SHALL BE CHARGED FOR BOTH THE SECOND YEAR OF ASSESSMENT AND THE THIRD YEAR OF ASSESSMENT (*but not for one or other only of those years*) on the amount of the profits or gains of each such year respectively

Provided that HE MAY BY NOTICE IN WRITING GIVEN to the inspector WITHIN TWELVE MONTHS AFTER THE END OF THE THIRD YEAR OF ASSESSMENT REVOKE THE NOTICE and in such case tax shall be charged for both the second year of assessment and the third year of assessment as if the first notice had never been given.

(3) If at any time during the second or third year of assessment, any such change as is mentioned in paragraph (1) of Rule II of the Rules applicable to Cases I and II of Schedule D [*i.e.*, where there is a change in the membership of a partnership—*see* p. 172], occurs in the persons engaged in the trade, profession, or vocation, a notice for the purposes of the last preceding subsection or of the proviso thereto, must, if given after the occurrence of the change—

(a) in the case of a notice given within twelve months after the end of the second year of assessment, be signed by each of the persons who were engaged in the trade, profession, or vocation, at any time between the commencement of the second year of assessment and the giving of the notice, or, in the case of a deceased person, by his legal representatives; and

(b) in the case of a notice given after the end of the third year of assessment, be signed by each of the persons who were engaged in the trade, profession, or vocation, at any time during the second or third year of assessment, or, in the case of a deceased person, by his legal representatives.

(4) In the case of the death of a person who, if he had not died, would, under the provisions of this section have become chargeable to Income Tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators and shall be a debt due from and payable out of his estate

(5) There shall be made such additional assessments, reductions of assessments or repayments of tax as may in any case be required in order to give effect to the foregoing provisions of this section.

(6) This section shall apply in relation to trades, professions or vocations set up or commenced in the year 1928-29 or any subsequent year of assessment

Provided that in the case of a trade, profession or vocation set up or commenced in the year 1928-29 the person charged may, instead of giving notice under subsection (2) of this section give notice under proviso (a) to subsection (1) of section twenty-nine of the Finance Act, 1926 and shall, if he so gives notice, be entitled to be charged under the said proviso for the year 1929-30

Illustrations.

(1) M. commenced business on 1st January, 1929 His accounts for the first three years, made up to 31st December, showed the following profits.—1929, £1,200, 1930, £2,400; 1931, £3,200.

His assessments would therefore be as follows —1928-29, $\frac{1}{12}$ ths of £1,200 = £300; 1929-30, £1,200; 1930-31, £1,200; 1931-32, £2,400, 1932-33, £3,200.

The 1928-29 assessment is on the actual profits from 1st January, 1929, to 5th April, 1929 (ignoring the fraction of a month, as would normally be done in practice).

The 1929-30 assessment is on the profits of one year from the commencement, i.e., the 1929 profits

Thereafter, the assessments are based upon the profits of the preceding year in every case.

(2) N. commenced business on 1st January, 1929, his profits for the years ended 31st December, being —1929, £2,400, 1930, £3,000; 1931, £100. His assessments would be as follows —

Year of Assessment	Original Assessment	Assessment as amended under § 15—1930. ✓
1928-29	$\frac{1}{12}$ of £2,400 = £200	(not applicable)
1929-30	£2,400	$\frac{1}{12}$ of £2,400 + $\frac{11}{12}$ of £3,000 = £2,550
1930-31	£2,400	$\frac{1}{12}$ of £3,000 + $\frac{11}{12}$ of £100 = £2,275
1931-32	£3,000	(not applicable)

In this case, the result of the adjustment under § 15—1930 would be to increase the assessments for the two years 1929-30 and 1930-31 by £25 in all, and a claim would not be preferred.

(3) T. Ltd. commenced business on 1st June, 1929. His profits were as follows :—

Seven months ended 31st December, 1929 ..	£700
Year ended 31st December, 1930	£2,400
" " " 1931	£1,800
" " " 1932	£960

ASSESSMENTS.

1929-30 ✓ Either £700 + $\frac{1}{2}$ ths of £2,400 = £1,300
or $\frac{1}{2}$ ths of £700 = £1,000
as decided upon by the assessing Commissioners
under Rule 2, Case VI The former is the usual
method.

1930-31 On the profits of twelve months from the period
of commencement, i.e.,
✓ £700 + $\frac{1}{2}$ ths of £2,400 = £1,700

1931-32 Since the accounts for the year ended 31st
December, 1930, began neither at the date when
the business commenced nor at the date to which
was taken the period on which the 1930-31
assessment was based, the Commissioners of
Inland Revenue must choose the basic twelve
months (see Chap. IV, § 7) They would
✓ normally take the 1930 accounts = £2,400

At any time before 6th April, 1933, the taxpayer may elect
to be assessed upon the actual profits of 1930-31 and 1931-32, as
follows :—

1930-31 $\frac{1}{2}$ ths of £2,400 + $\frac{1}{2}$ ths of £1,800 = £2,250.

1931-32 $\frac{1}{2}$ ths of £1,800 + $\frac{1}{2}$ ths of £960 = £1,590.

resulting in a saving of the tax on £(1,700 + 2,400) — £(2,250 + 1,590) = £260.

NOTE.—In deciding whether or not to claim an adjustment
to "actual," not only the amount of the assessments, but the
rates of tax should be taken into consideration.

Where a barrister is appointed a King's Counsel, his profession is unchanged and is not to be treated as if he had discontinued one profession and commenced a new one (*Seldon v. Croom-Johnson and v. Thomas* (1932), 16 T.C. 740).

§ 9.—Discontinuance of Business.

Upon the discontinuance of a business, the assessment is adjusted to the actual profits of that year of assessment, *i.e.*, from the 6th April to the date of discontinuance. Thus, while the taxpayer is enabled to claim a reduction of the assessment where the actual profit is lower than the statutory income, in the same way the Revenue Authorities have the power to increase the assessment if the actual profits are higher than those of the previous year. Further, the assessment for the year before the year of discontinuance (*i.e.*, the penultimate year) may be increased to the actual profits of that year where such profits are greater than the assessment based on the profits of the previous year, but there is no corresponding right to the taxpayer to have the assessment reduced where the actual profits are lower than the assessment (§ 31—1926). By the profits of the penultimate year is meant the apportioned profits from 6th April to 5th April (*Manson v. Wesley* (1931), 16 T.C. 654).

Illustrations.

(1) X. discontinued business on the 30th September, 1933.

His adjusted profits were as follows—

Year ended 31st December,	1930	..	£800
" " " "	1931	..	£1,000
" " " "	1932	..	£600
Period ended 30th September,	1933	..	£400

ASSESSMENTS.

1931-32	Preceding year's profits	..	..	..	£800
1932-33	do.	..	..	..	£1,000
1933-34	Actual profits ½ths of £400	..	..	..	£267

Since the profits for the penultimate year are less than the assessment for 1932-33, there is no adjustment of the 1932-33 assessment

(2) K. Ltd, discontinued business on 1st February, 1933.

Its profits were as follows:—

Year ended 30th September,	1929	..	£1,700
do.	1930	..	£1,200
do.	1931	..	£1,800
do.	1932	..	£900
Period ended 1st February,	1933	..	£100

ASSESSMENTS.

1930-31	Preceding year's profits	..	..	£1,700
1931-32	do.	..	..	£1,200
1932-33	Actual profits ½ths of £900 + £100	=		£550

An additional assessment of £150 is then raised to bring the assessment for 1931-32 up to the actual profit of the penultimate year, i.e., the year ended 5th April, 1932, viz., ½ths of £1,800 + ½ths of £900 = £1,350

If, after the dissolution of a partnership, the offices are kept open for the receipt and payment of accounts and carrying out existing contracts, the firm is assessable after dissolution if it is in fact *trading*, i.e., the rounding off of transactions, even in the total absence of buying and selling, may be trading (*Hillerns & Fowler v. Murray* (1932), 17 T.C. 77).

§ 10.—Change in Ownership of a Business.

The rules for determining the assessments where there is a change in the proprietorship of a business are contained in Rule 11, Cases I and II, Schedule D, as amended by § 32, Finance Act, 1926, and § 16, Finance Act, 1930, viz.:—

11.--(1) If at any time after the fifth day of April, nineteen hundred and twenty-eight, a change occurs in a partnership of persons engaged in any trade, profession or vocation, by reason of retirement or death, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, in such circumstances that *one or more of the persons who until that time were engaged in the trade, profession or vocation continue to be engaged therein*, or a person who until that time was engaged in any trade, profession or vocation on his own account continues to be engaged in it, but as a partner in a partnership, the TAX PAYABLE by the person or persons who carry on the trade, profession or vocation after that time SHALL, notwithstanding the change, *be computed according to the profits or gains of the trade, profession or vocation during the period prescribed by the Income Tax Acts :*

Provided that, WHERE ALL THE PERSONS WHO WERE ENGAGED IN THE TRADE, profession or vocation *both immediately before and immediately after the change* require, BY NOTICE SIGNED BY ALL of them, or, in the case of a deceased person, by his legal representatives, and sent to the inspector of taxes, (WITHIN TWELVE MONTHS AFTER THE CHANGE took place, THAT THE TAX payable for all years of assessment shall BE COMPUTED AS IF THE TRADE, profession or vocation HAD BEEN DISCONTINUED at the date of the change, AND A NEW TRADE, profession or vocation had been then set up or COMMENCED, and that the tax so computed for any year shall be charged on and paid by such of them as would have been charged if such discontinuance and setting up or commencement had actually taken place, the tax shall be computed, charged, collected and paid accordingly

(2) If at any time after the said fifth day of April any person succeeds to any trade, profession or vocation which until that time was carried on by another person and the case is not one to which paragraph (1) of this Rule applies, the tax payable for all years of assessment by the person succeeding as aforesaid shall be computed as if he had set up or commenced the trade, profession or vocation at that time, and the tax payable for all years of assessment by the person who until that time carried on the trade, profession or vocation shall be computed as if it had then been discontinued.

In this paragraph references to a person include references to a partnership.

(3) In the case of the death of a person who, if he had not died, would under the provisions of this Rule, have become chargeable to Income Tax for any year, the tax which would have been so chargeable shall be assessed and charged upon his executors or administrators, and shall be a debt due from and payable out of his estate

Wherever, therefore, there is a succession to a business, the assessments are made as for a business discontinued and a new business started on the date of the succession, except in the case where there is at least one person continuing as owner or part owner (*i.e.*, where there is a change in a partnership, or a partner is admitted by a sole trader), in which case the assessments continue on the preceding year basis unless all persons engaged in the business, both before and after the succession, give notice that they want to be assessed as if there had been a discontinuance and recommencement.

In those cases where the preceding year basis does continue, Rule 9, Cases I and II, Schedule D, provides that within four months from 5th April following the change, the Inspector must certify to the General Commissioners the particulars of the change, and the Commissioners must then notify the respective persons of a meeting of the Commissioners to consider the Inspector's certificate. After examination of the persons (if they attend) or on other satisfactory proof of the facts, the Commissioners must adjust the assessment by charging the successor(s) with a fair proportion thereof from the time of his (their) succession, relieving the person(s) originally charged from a like amount. The determination of the Commissioners is final.

Normally, the assessment is apportioned between the old and new firms on a time basis, but a turnover or other fair basis may be adopted if the Commissioners think fit.

In a case where changes took place in a partnership in successive years, no notice under the amended

Rule 11 being given on the first change, but notice being given on the second change, it was held that the notice affected only the second and third firms, and no amendment of the first firm's assessment was permissible (*Osler v. Hall & Co.* (1932), 17 T.C. 68).

(f) It is necessary to note that there is no continuity between a partnership and a limited company, even where the partners become the only members of that company, and, therefore, in every case where a business is converted into a limited company, it must be assessed as if discontinued and recommenced on the date of the succession (Rule 11 (2), Cases I and II, Schedule D, as amended by § 32, 1926).

The date of the change is a question of fact to be determined in each case on the exact circumstances. In general terms, the date of the vending agreement must be taken to be the date of change, but if it can be shown that in fact the legal ownership passed on some other date, then that date is the date of change. The date mentioned in the agreement is not conclusive; the question is, when was there a succession *de facto*? (*Todd v. Jones* (1930), 15 T.C. 396).

Where there is an amalgamation or absorption of business in such circumstances that it is considered to be a partnership change, then the combined profits prior to the change must be looked at in ascertaining the assessments for the combined business.

Illustration.

A. and B. carried on business in partnership. On 1st January, 1933, they admitted C. as a partner, C. bringing in his own business. The profits for the year ended 31st December, 1932, were as follows:—A. and B., £3,000, C. £600. The new firm of A. B. & C. will be assessed for 1933-34 on the combined profits of £3,600. (In addition, one-fourth of the separate assessments for 1932-33 will be added together to arrive at the assessment on A. B. & C.

for the period from 1st January, 1933 to 5th April, 1933. The remaining three-fourths of the A. B. 1932-33 assessment must be borne by A and B., and the three-fourths of C's assessment by C.)

Where a new branch is opened, it is a question of fact whether the new branch is to be considered as a mere development of the existing business, or the setting up of a new business to be assessed as such (see *Bell v. National Provincial Bank of England* (1904), 5 T.C. 1; *Stockham v. Wallasey U.D.C.* (1906), 95 L.T. 834; *Thomson and Balfour v. Le Page* (1924), 8 T.C. 541; *Fullwood Foundry Co. v. C.I.R.* (1924), 9 T.C. 101).

Where a portion of an undertaking is discontinued, it will likewise depend upon whether it is a mere contraction of the business (in which case the assessment for the following year must be based upon the profits of the whole undertaking in the year preceding the year of assessment), or whether a separate undertaking has been discontinued (in which case the parts will be separately assessed, that closed down being treated as discontinued). It has, in recent years, been definitely established that if, as a matter of fact, a company carries on two separate and distinct businesses, in computing the assessment to income tax that factor must be borne in mind, and therefore if one separate and distinct branch of the business ceases, the assessment for the following year will be based upon the profits in the preceding year of the continuing branch only.

§ 11.—Partnership Assessments.

The assessment of a firm is a joint assessment made in the partnership name, and not separately on the individual partners constituting the firm (Rule 10, Cases I and II, Sch. D).

This Rule is in effect an example of the principle of collection of tax at the source, and places the liability of paying the tax on the firm as a whole rather than making each partner liable for his proportion only. This does not affect the rights of the individual partners to claim allowances or deductions, for the reason that § 20 specially provides that any partner making such claim may be treated separately for the purpose of any allowance or deduction.

The following is the text of the part of the Section referred to :—

20. The income of a partner from a partnership carrying on any trade, profession, or vocation shall be deemed to be the share to which he is entitled during the year to which the claim relates, in the partnership profits, such profits being estimated according to the several rules and directions of this Act.

The correct allocation of the statutory profit of a business is therefore a matter of two-fold importance :

- 1. (a) It secures a proper allocation of the burden of the tax between the partners, even if no claim for allowance is made.
- 2. (b) It enables the individual partners to ascertain what rights, if any, they may have.

Dealing with these two points *seriatim*—

(a) Where no claim for Allowances or Relief is made.

It must be borne in mind, that even apart from any claims which can be made by the individual partners, it does not necessarily follow that the statutory profit of the firm should be divided between them in the proportions in which they share profits and losses. Items such as interest on capital, and partners' salaries, which are appropriations of profit from an Income Tax point of view, and which must be added to the profit in order to obtain the statutory profit,

are not shared by the partners in the proportions in which they share profits and losses. Consequently, it is necessary to make careful adjustment to see that each partner is charged with the proportion of the tax applicable to him only.

To do this it is necessary to divide the assessment for the year of assessment between the partners in the same manner as they would divide a profit of that amount *for that year*, irrespective of how they actually shared profits in the year, the profits of which are taken as the basis of the assessment.

The assessment is, for Income Tax purposes, the profits of the firm for the year of assessment, and must be treated as such.

Illustration.

A., B. & C. are in partnership, sharing profits and losses equally. Their capitals vary from year to year, and interest at 5 per cent. per annum is allowed. They receive salaries as follows — A. £900, B. £600, and C. £300.

The following is the firm's Profit and Loss Account made up to the 31st December, 1932.

Dr	PROFIT AND LOSS ACCOUNT		Cr
To Trade Expenses	£	By Gross Profits	£
„ Salaries	1,623		13,182
„ Interest on Capital—	846		
A	850		
B	450		
C	150		
„ Partner's Salaries—			
A	900		
B	600		
C	300		
„ Depreciation of Lease	120		
„ Charitable Subscriptions	33		
„ Profit	7,310		
	£13,182		<u>£13,182</u>

The charitable subscriptions are not to institutions from which the employees might benefit and therefore are disallowed.

The interest on capital credited to the partners in each year after 1st January, 1933, is A. £950 ; B £500, and C. £200.

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<i>Dr</i> PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX		<i>Cr.</i>
To Assessable Profits ..	£ 10 713	By Net Profits as per A/cs .. £ 7,310
		„ Interest on Capital—
		A .. 850
		B .. 450
		C .. 150
		„ Partners' Salaries—
		A .. 900
		B .. 600
		C .. 300
		„ Depreciation of Lease .. 120
		„ Charitable Subscriptions .. 33
	<u>£10,713</u>	<u>£10,713</u>
Statutory Profit forming Assessment for 1933-34 ..		<u>£10,713</u>

This Statutory Profit of £10,713 is not divisible between the partners equally, because it includes Partners' Salaries and Interest on Capital, which are shared in other proportions.

In order to apportion this Statutory Profit it is necessary to proceed as follows —

Assessment on Firm, 1933-34. ..	£10,713
<i>Deduct —</i>	
Partners' Salaries, year to 5th April, 1934	£1,800
Interest on Capital do. A.	950
Do. do. B.	500
Do. do. C.	200
	<u>3,450</u>
Balance divisible proportionately	<u>£7,263</u>
A.—Salary	£900
Interest on Capital	950
1/3rd share of £7,263	2,421
	<u>4,271</u>
B.—Salary	£600
Interest on Capital	500
1/3rd share of £7,263	2,421
	<u>3,521</u>
C.—Salary	£300
Interest on Capital	200
1/3rd share of £7,263	2,421
	<u>2,921</u>
TOTAL	<u>£10,713</u>

✓ The Official Return Form requires the allocations to be set out as follows :—

Partner.	Salary.	Interest on Capital	Distribution of Balance	Partner's Share of Balance
A.	£900	£950	1/3rd.	£2,421
B.	600	500	1/3rd.	2,421
C.	300	200	1/3rd.	2,421
	<u>£1,800</u>	<u>£1,650</u>		<u>£7,263</u>

Note to Illustration.

The above statement shows the correct allocation of the assessment of the firm. When the tax is paid, it should be divided according to each partner's statutory income from the firm, as above, and charged to the respective Current Accounts, and not to the Profit and Loss Account.

If the assessment had been divided equally between the partners, the burden of the tax would have been very unjustly allocated.

The following statement illustrates this remark :—

Partner	Correct Allocation	If assessment were divided equally	Over-taxed	Under-taxed
A.	£ 4,271	£ 3,571	£ —	£ 700
B.	3,521	3,571	50	—
C.	2,921	3,571	650	—
	<u>£10,713</u>	<u>10,713</u>	<u>700</u>	<u>700</u>

(b) Where a Claim for Allowances is made.

Where the partners of a firm claim under § 20 against the firm's assessment their individual allowances or deductions, the ultimate amount of the tax payable will be very much less than would have been the case if such a claim had not been made. Further, as each of the partners may prove to be entitled to

different rights, the allocation of the burden of the tax is still further complicated, rendering careful adjustment more than ever necessary.

Illustration.

A., B., C. and D. having no private income are in partnership. The following statement shows for the year 1933-34 the capitals of the individual partners upon which 5 per cent. interest is allowed; the salaries of the partners; and the proportions in which they share in the profits and losses of the business —

Partner	Capital	Interest on Capital	Salary	Shares in Business.
	£	£	£	£
A	13,200	660	900	37/80ths
B	6,800	340	700	24/80ths
C	1,200	60	Nil	10/80ths
D	Nil	Nil	Nil	3/80ths
	£21,200	1,060	1600	1

The following is the firm's Profit and Loss Account made up to the 31st December, 1932 :—

Dr	PROFIT AND LOSS ACCOUNT		Cr
To Trade Expenses	630	By Gross Profits	6,970
Salaries	480		
Capital Expenditure	7		
Interest on Capital	1,060		
Partners' Salaries	1,600		
Profit	3,127		
	<hr/>		
	£6,970		£6,970

PROFIT AND LOSS ADJUSTMENT ACCOUNT			
Dr	FOR INCOME TAX		Cr.
To Assessable Profits	5,860	By Net Profit	£ 3,125
		„ Capital Expenditure	75
		„ Interest on Capital	1,060
		„ Partners' Salaries	1,600
	£5,860		£5,860

Statutory Profit, 1933-34 .. £5,860

If no claim were made under § 20 the assessment would be made on £5,860 as above, at the standard rate of 5/- in the £.

A claim is made, however, and the following statements are prepared by the Partners to ascertain the correct allocation of the assessment, and also the rights to which they are individually entitled.

INCOME TAX.

Statutory profit of firm	..	..	£5,860
<i>Deduct—</i>			
Partners' Salaries	..	..	£1,600
Interest on Capital	..	..	1,060
			<hr/> 2,660
Balance divisible proportionately			<u>£3,200</u>
APPORTIONMENT—			
A.—Salary	..	..	£900
Interest on Capital	..	..	660
$\frac{1}{4}$ ths of £3,200	..	..	1,480
			<hr/> £3,040
B.—Salary	..	..	£700
Interest on Capital	..	..	340
$\frac{1}{4}$ ths of £3,200	..	..	960
			<hr/> 2,000
C.—Interest on Capital	..	..	£60
$\frac{1}{4}$ th of £3,200	..	..	640
			<hr/> 700
D.— $\frac{1}{4}$ ths of £3,200	..	..	120
			<hr/> 120
TOTAL	..	..	£5,860

A., B. and C are married and have two, three, and two children respectively. They pay Life Assurance Premiums (which are all pre-war and allowable in full) amounting to £350, £160 and £40 respectively.

A.'s liability is as follows —

Share of Profits	..	..	£3,040
Less Earned Income Allowance			
$\frac{1}{4}$ th restricted to	..	..	300 ✓
			<hr/> £2,740
Assessable Income	..	..	£2,740
Less Personal Allowance	..	..	£150
Two Children	..	..	90
			<hr/> 240
Taxable Income	..	..	<u>£2,500</u>
Chargeable £175 @ 2/6	..	..	= £21 17 6
2,325 @ 5/-	..	..	= 581 5 0
Total	..	..	603 2 6
Less Life Assurance Relief £350 @ 5/-	..	..	87 10 0
Net	..	..	£515 12 6

B.'s liability is as follows :—

Share of Profits	£2,000
<i>Less</i> Earned Income Allowance ..	300
Assessable Income	£1,700
<i>Less</i> Personal Allowance ..	£150
Three Children	130
	<u>280</u>
Taxable Income	<u>£1,420</u>
Chargeable £175 @ 2/6	= £21 17 6
1,245 @ 5/-	= 311 5 0
Total ..	<u>333 2 6</u>
<i>Less</i> Life Assurance Relief computed (since his Statutory Income <i>does not exceed</i> £2,000) as in Chapter II, § 17—	
£160 @ 3/9	£30 0 0
Add 160 @ 1/3	10 0 0
	<u>40 0 0</u>
Net ..	<u>£293 2 6</u>

C.'s liability is as follows .—

Share of Profits	£700
<i>Less</i> Earned Income Allowance ..	140
Assessable Income	£560
<i>Less</i> Personal Allowance ..	£150
Two Children	90
	<u>240</u>
Taxable Income	<u>£320</u>
Chargeable £175 @ 2/6	= £21 17 6
145 @ 5/-	= 36 5 0
	<u>58 2 6</u>
<i>Less</i> Life Assurance Relief £40 @ 2 6 ..	<u>5 0 0</u>
Net ..	<u>£53 2 6</u>

D.'s share of profits only amounts to £120 and he is not liable for payment of any tax, his earned income (£24) and personal allowances (part £96) being sufficient to offset his share of profits."

The total Income Tax charged on the firm will be £515 12s. 6d. + £293 2s. 6d., + £53 2s. 6d. = £861 17s. 6d., whereas, if no claim were made by the partners, the tax payable would amount to 5/- in the £ on £5,860 = £1,465.

The firm's assessment would appear as follows :—

Business Profits	£5,860	0	0
Earned Income Allowance	764		
Personal Allowance	546 [✓]		
Children	310		
	—	1,620	0 0
		<u>£4,240</u>	<u>0 0</u>
Chargeable £525 @ 2/6	£65	12	6
3,715 @ 5/	928	15	0
		994	7 6
Life Assurance Relief	132	10	0
[✓] Tax payable	<u>£861</u>	<u>17</u>	<u>6</u>

It will be seen that the allowances are simply the totals of the individual partner's allowances.

(c) Fluctuating Interest on Capital and Salaries of Partners.

As the share of the partner claiming an allowance or deduction is deemed to be the income of the individual for the year to which the claim relates, the ACTUAL INTEREST ON CAPITAL AND SALARY TO WHICH HE IS ENTITLED DURING THE YEAR OF ASSESSMENT should, strictly, be taken into account in arriving at the correct allocation of the assessment.

In the case of continually fluctuating capital this may be a factor impossible of ascertainment before the completion of the year of assessment, and the usual course is in the first place to take the interest of the previous year and to apportion the profits, so far as interest is concerned, on this basis, adjusting at a later date if necessary.

(d) Partnership Returns. .

The precedent acting partner, that is to say, the partner who, being resident in the United Kingdom—

- (i) is first named in the agreement of partnership, or
- (ii) if there be no agreement, is named singly or with precedence to the other partners in the usual name of the firm ; or

(iii) is the precedent acting partner, if the person named with precedence is not an acting partner; must make and deliver a statement of the profits or gains of the firm's trade or profession, on behalf of himself and the other partners, and declare therein the names and residences of the other partners.

Where no partner is resident in the United Kingdom, the return must be made by the agent, manager or factor of the firm resident in the United Kingdom.

The Commissioners may require a similar return from any other partner, if they so think fit (Rule 10, Cases I and II, Sch. D).

The individual partners make returns of their private incomes, including their respective shares of the firm's assessment.

An illustration will now be given of the computation of the tax payable and its allocation where the firm has other sources of income and the partners have private incomes.

Illustration.

(1) A., B. and C. carried on business in partnership. For the year ended 30th November, 1932, the Profit and Loss Account was as follows.—

<i>Dr</i>		PROFIT AND LOSS ACCOUNT	
	£		£
To Ground Rent of Factory	40	By Gross Profit	6,310
„ Rates and Insurance	260	„ Dividends (Gross amount)	200
„ Office Expenses	1,130	„ Bank Interest	10
„ Salaries	1,800		
„ Discounts	170		
„ Bad Debts written off	£60		
<i>Less</i> Transfer from			
Bad Debt Reserve	25		
„ Depreciation	35		
„ Amount written off Lease	295		
„ Interest on Loan B	90		
„ Interest on Capital	300		
A	1,400		
B	200		
C	200		
„ Net Profit—	800		
A	£640		
B	640		
C	320		
	1,600		
	£6,520		
			£6,520

The salaries include £200 to C. The Bad Debt Reserve is not against specific debts. The Net Annual Value of the premises is £155. The investments remain unchanged. It is agreed with the Inspector of Taxes that bank interest shall be left in charge in the Profit and Loss Account. The Wear and Tear Allowance for 1933-34 is agreed at £220.

As from 1st December, 1932, C.'s salary is increased to £300 per annum, and the capitals are varied, with the result that the interest each year is as follows:—

A —£500, B —£300, C. —£300

The balance of profits is divided as before. The interest payable on B.'s Loan to the firm remained constant.

A is a married man, with one child under 16. His wife owns the house in which they live (assessed under Schedule A at £80 per annum (net), subject to a mortgage of £700 at 5% per annum interest), and is the owner of a small business the adjusted profits of which for the year ended 31st December, 1932, amounted to £420. A pays a premium of £60 per annum on an assurance policy on his own life, taken out in 1912.

B. is single and maintains his widowed mother, but has no income other than that from the partnership.

C. is a widower, whose sister lives with him as housekeeper. He holds £2,857 3½% War Loan, and pays a premium of £48 per annum on a policy on his own life taken out on 1st July, 1933, the premium being payable by monthly instalments of £4.

PROFIT AND LOSS ADJUSTMENT ACCOUNT

Dr.	FOR INCOME TAX		Cr
	£		£
✓ To Bad Debt Reserve	25	By Net Profit	1,600
.. Dividends	200	.. Ground Rent	40
.. Gross Annual Value of Premises (Factory)	190	.. C's Salary	200
.. Adjusted Profits	2,910	.. Depreciation	295
		.. Amount written off Lease	90
		.. Interest on Loan B	300
		.. Interest on Capital	800
	<u>£3,325</u>		<u>£3,325</u>

Sch. D, Case I, Assessment 1933-34 £2,910
 Less Wear and Tear Allowance 220

£2,690

Schedule A Assessment £155

The firm has also income taxed at source, dividends £200, and pays Annual Charges, ground rent £40 and interest on loan £300, from both of which Income Tax must be deducted at source.

NOTES.—(1) The majority of the adjustments have already been fully explained in earlier examples.

(2) Interest on loans as distinct from capital is an annual payment from which tax is deductible under Rule 19, All Schedules Rules.

(3) Since the bad debt reserve is not against specific debts, the appropriation would not have been allowed as a deduction for Income Tax purposes when made, and has therefore borne tax. The £25 brought into credit in the Profit and Loss Account is not again subject to tax and must be eliminated by debiting the Adjustment account

(4) Since the premises consist of a factory, the Gross Annual Value is allowed as a charge. This is found as follows

Since £20 is the repairs allowance on the first £100 gross, the first £80 net represents a gross amount of £100

Since the remainder of the repairs allowance is one-sixth of the excess of the Gross Annual Value over £100 the remainder of the Net Annual Value represents $\frac{5}{6}$ ths of the Gross, hence the Gross is $\frac{6}{5}$ ths of the remainder of the Net, i.e., $\frac{6}{5}$ ths £(155 - 80)

90

Gross Annual Value £190

(or, more shortly, $\frac{6}{5}$ ths of £155 = £4)

ALLOCATION OF ASSESSMENTS, 1933-34

	Salary	Interest on Capital	Basis of Distribution of Balance	Amount of Partners' Share of Balance	Total
A. ..	—	£500	$\frac{5}{6}$ ths.	£516	£1,016
B. ..	—	300	$\frac{5}{6}$ ths.	516	816
C. ..	£300	300	$\frac{1}{6}$ th.	258	858
	<u>£300</u>	<u>£1,100</u>		<u>£1,290</u>	<u>£2,690</u>

COMPUTATIONS, 1933-34

	(a)*	A	B	C.
Partnership Profits	(b)	£1,016	£816	£868
Net Annual Value of Premises £155	(c)	62	62	31
Dividends £200		80	80	40
		<u>1,158</u>	<u>958</u>	<u>929</u>
Less Firm's Annual Charges				
Ground Rent £40	(d)	16	16	8
Interest on Loan £300	(e)	120	120	60
		<u>136</u>	<u>136</u>	<u>68</u>
Shares in Total Statutory Income of Firm		£1,022	822	861
Private Incomes—				
Interest on Loan	(f)		300	
House, N A V	(g)	80		
Wife's Business	(h)	420		
War Loan	(i)			100
		<u>1,522</u>		
Less Private Charges—				
Mortgage Interest	(j)	35		
		<u>1,487</u>	<u>1,122</u>	<u>961</u>
Total Statutory Incomes of Individual Partners				
Deduct Allowances for Earned Income				
Firm one-fifth of (a)	203			
Wife's Business one-fifth of (h)	84			
		<u>287</u>	<u>163</u>	<u>172</u>
Assessable Income		1,200	959	789
Deduct Other Allowances				
Personal			100	100
Additional Personal (Max.)				
Child	50			
Dependent Relative			25	
Housekeeper				50
		<u>215</u>	<u>125</u>	<u>150</u>
Taxable Incomes		<u>£985</u>	<u>£834</u>	<u>£639</u>
Chargeable		£ s d	£ s d	£ s d
£175 each at 2/6		21 17 6	21 17 6	21 17 6
Balance at 5.	(£780)	105 0 0 (650)	164 15 0 (464)	118 0 4)
		<u>216 17 6</u>	<u>186 12 6</u>	<u>137 17 6</u>
Less Life Assurance Relief—				
(A) 160 at 3/6	(A)	11 5 0		
(C) 140 at 2/6	(C)			5 0 0
Amount of Tax to be borne by the Partners		£205 12 6	£186 12 6	£132 17 6
Add Tax deductible from Private Charges (j)—				
£35 at 5/-		8 15 0		
		<u>£214 7 6</u>		
Less Tax paid privately				
(A) House (p) £80 at 5/-		£20 0 0		
Business (h)		1420		
Less 1/3 A		84		
		<u>336</u>		
Less Additional Personal Allowance 45				
£201 at 5/-		72 15 0		
		<u>92 15 0</u>		
(B) By deduction from Interest (f)			75 0 0	
£300 at 5/-				
(C) On War Loan Inter. at (i) under Case III—				25 0 0
£100 at 5/-				
Tax to be borne by Partners		121 12 6	111 12 6	107 17 6
Add Tax deductible from Firm's Charges (d) and (e) at 5/-		(136) 34 0 0	(136) 34 0 0	(68) 17 0 0
Tax to be accounted for by firm		<u>£155 12 6</u>	<u>£145 12 6</u>	<u>£124 17 6</u>

The total tax to be accounted for⁴ by the firm is there-
fore £426 2 6

This is accounted for :—

By deduction from Dividends, £200 at 5	..	£50	0	0
By Assessment under Schedule A, £155 at 5/-	..	38	15	0
By Assessment under Schedule D, Case I (balance)	337	7	6	
		<u>£426</u>	<u>2</u>	<u>6</u>

PROOF—FIRM'S ASSESSMENT UNDER CASE I.

	Business Profits	..	..	..	..	£2,690
Earned In- come Allowance	Personal Allowances	Child	Dependent Relatives	House- keeper		
£538	350	50	25	50	..	1,013
	Taxable Income	..	..	..	..	<u>£1,677</u>
Chargeable £175 each, i.e., £525 at 2/6	..	..	..	..	..	£65 12 6
	1,152 at 5/-	..	..	..	..	288 0 0
						<u>353 12 6</u>
Less Life Assurance Relief	..	..	..	..	..	16 5 0
	Tax payable	..	..	..	..	<u>£337 7 6</u>

NOTES.—(1) In order to arrive at the partners' shares of the firm's Total Statutory Income, the Income from other sources and the Annual Charges must be divided among the partners in their profit sharing ratio, i.e., 2 . 2 . 1

(2) The allowances applicable to private income, i.e., on the business of Mrs. A., are deducted from such income

(3) A.'s Total Income is over £1,000, but not over £2,000, hence the insurance relief (k) is computed at three-quarters of the standard rate, the policy being dated prior to 23rd June, 1916.

C. has paid only ten months' premiums during the year, and his relief is accordingly on £40 (l).

ALTERNATIVELY, the Computation may proceed as follows—

	A	B	C
	£1,022	£822	£861
Firm's Total Income (as above)			
Deduct Allowances—			
Earned Income	£203	163	172
Personal	150	100	100
Child	50		
Dependent Relative		25	
Housekeeper			50
	403	288	322
	<u>£619</u>	<u>534</u>	<u>539</u>
Chargeable	£ s d	£ s d	£ s d
At 17½ each at 2/6	21 17 6	21 17 6	21 17 6
Balance at 5/-	(414) 111 0 0	(350) 89 15 0	(364) 91 0 0
	132 17 6	111 12 6	112 17 6
Less Life Assurance Relief	11 5 0		5 0 0
To be borne as partners	<u>£121 12 6</u>	<u>£111 12 6</u>	<u>£107 17 6</u>
		£ s d	
Total		341 2 6	
Add Tax on firm's charges—			
£340 at 5/-		85 0 0	
		<u>426 2 6</u>	
Payable by firm			
Deduct Deducted from Dividends	£50 0 0		
Schedule A	38 15 0		
	<u>11 15 0</u>	88 15 0	
Case I		<u>£337 7 6</u>	

The private assessments can now be calculated

NOTE—Care must be taken, in arriving at the Statutory Total Income of the Partners for life assurance relief, to add together the total firm and private incomes

Illustration. (2)

L. K. and H. were in partnership, sharing profits equally, after charging interest on capital at 5%. On 30th June, 1933, K. died. No claim was made under § 32, 1926

The capitals were fixed at £10,000, £5,000 and £5,000 respectively. On K's death, however, the capitals of L. and H. were adjusted to £12,000 each, and L. thereafter received a salary of £600 per annum, payable monthly.

The adjusted profits for the year ended 30th June, 1932, were £8,000. Show the division of the 1933-34 assessment.

✓ The assessment is first "split" under Rule 9—

Assessment for 1933-34 £8,000

Proportion, 6th April, 1933, to 30th June, 1933, say $\frac{1}{4}$ ths
of £8,000 = £2,000

Proportion 1st July, 1933, to 5th April, 1934, say $\frac{3}{4}$ ths
of £8,000 = £6,000

The assessment is then divided—

	L.			K.			H.		
	£	s	d	£	s	d	£	s	d
Interest on Capital to 30th June, 1933 (5% for three months)	125	0	0	62	10	0	62	10	0
Balance £(2,000—250) equally	583	6	8	583	6	8	583	6	8
Interest on Capital 1st July, 1933, to 5th April, 1934, (5% for nine months on new capitals)	450	0	0				450	0	0
Salary, nine months	450								
Balance £(6,000 - 1,350) equally	2,325						2,325	0	0
							£645	16	8
							£3,420	16	8

Note to Illustration

The assessment of £8,000 being, from an Income Tax point of view, the profit of the year ended 5th April, 1934, must be divided among the partners as they share profits in that year. The proportion of the assessment relating to the period from 6th April to 30th June is therefore divided according to the old agreement, and the balance according to the new agreement.

§ 12.—Distribution of Income Tax over the Profits of a Limited Company.

The amount of Income Tax chargeable against the Profit and Loss Account of a limited company is, in the majority of cases, less than the amount in respect of which the company has been assessed for income tax for any particular year, the reason being that as Income Tax is collected at the source, tax in respect of debenture interest, dividends, etc., will be deducted by the company prior to paying such interest or dividends. In this way the company recoups a portion of the tax payable.

The Illustration which follows demonstrates the point.

Illustration.

The following is the Profit and Loss Appropriation Account of the A. B. Co., Ltd., for the year ended 31st March, 1933.

The Income Tax assessment for the year 1932-33 amounts to £30,000 and the tax is 5/- in the £.

Show how the tax is distributed.

INCOME TAX.

A B CO., LTD

PROFIT AND LOSS APPROPRIATION ACCOUNT FOR THE YEAR

Dr	ENDED 31ST MARCH, 1933			Cr
Debenture Interest 5%	1,000	1	By Net Profit	35,000
Preference Share Dividend 6%	8,000			0
Ordinary Share Dividend 10%	10,000			0
Income Tax	1,250			
Reserve Fund	5,000	0		
Balance carried forward	3,750	0		
	£37,000	0		£35,000
		0		0

Dr	INCOME TAX ACCOUNT			Cr.		
	£	s	d	£	s	d
To Cash—Income Tax Commis- sioners— 5/- in the £ on £30,000	7,500	0	0	By Debenture Interest Account	250	0 0
				„ Preference Share Dividend	2,000	0 0
				„ Ordinary Share Dividend	4,000	0 0
				„ Profit and Loss Account	1,250	0 0
	£7,500	0	0		£7,500	0 0

NOTE.—The actual cash payable by the Company in respect of Income Tax is £7,500, but the proportion thereof debited to the Profit and Loss Account of the Company is only £1,250.

Where dividends are paid “free of tax,” the amount of the dividend as declared is debited to the Appropriation Account, and no amount is recouped to the credit of the Income Tax Account, with the result that the amount of this account to write off to Profit and Loss Account is correspondingly increased.

The authority for the deduction of tax from dividends is contained in Rule 20, General Rules, All Schedules, which reads :—

“The profits or gains to be charged on any body of persons shall be computed in accordance with the provisions of this Act on the full amount of the same before any dividend thereof is made in respect of any share, right or title thereto, and the body of persons paying such dividend shall be entitled to deduct the tax appropriate thereto.”

The provisions of Rule 20 of the General Rules are to be construed as authorising the deduction of tax from the full amount paid out of profits and gains of the said body which have been charged to tax or which, under the provisions of the Income Tax Acts, would fall to be included in computing the liability of the said body to assessment to tax for any year if the said provisions required the computation to be made by reference to the profits and gains of that year and not by reference to those of any other year or period.

A dividend paid by a body of persons, to the extent to which it is paid out of such profits and gains as are mentioned in the preceding paragraph is deemed, for all the purposes of the Income Tax Acts, to represent income of such an amount as would, after such deduction of tax as is authorised by the provisions of Rule 20, be equal to the net amount received; but this does not apply to a preference dividend (*i.e.*, a dividend payable on a preferred share at a fixed rate only, or such part of a dividend payable on a preferred share as is payable at a fixed gross rate only) (§ 7—1931).

The rate at which tax is deductible is the standard rate for the year in which the amount payable becomes due (§ 39, 1927), and it should be noted that a dividend is deemed to be due on the date on which it is declared payable (*Hurl v. C.I.R.* (1922), 8 T.C. 293).

Where the company has received any Dominion Income Tax Relief under § 27, 1920, then the rate of tax deductible from dividends must be proportionately reduced so as to pass on that relief to the shareholders (§ 27 (5), 1920 (*see* Chap. X, § 12)).

Every warrant or cheque or other order drawn or made, or purporting to be drawn or made, in payment of any dividend or interest distributed by any company within the meaning of the Companies Act, 1929, or a company created by letters patent or by or in pursuance of an Act of Parliament, must have annexed thereto or be accompanied by a statement in writing showing—

(a) the gross amount which, after deduction of the Income Tax appropriate thereto, corresponds to the net amount actually paid ; and

(b) the rate and the amount of Income Tax appropriate to such gross amount ; and

(c) the net amount actually paid.

If a company fails to comply with the above provisions the company, in respect of each offence, incurs a penalty of ten pounds; but the aggregate amount of any penalties imposed on any company in respect of offences connected with any one distribution of dividends or interest are not to exceed one hundred pounds (§ 33—1924).

If the company declares a dividend expressed to be “free of tax,” the effect is to declare a dividend at a higher rate, i.e., a dividend of $7\frac{1}{2}\%$ “free of tax” is equivalent to a dividend of 10% less tax at 5/- in the £, since 5/- in the £ on £10 is £2½. Even if the declaration is “free of tax,” the statement accompanying the dividend warrant must comply with § 33—1924.

Where a dividend was paid out of a fund which was not liable to tax (capital profits) it was held that

it could not be made to suffer tax by deduction, nor was such dividend assessable in the hands of the recipients (*Gimson v. C.I.R.* (1930), 99 L.J.K.B. 532).

Some doubt has, however, been cast upon the accuracy of this decision by the Court of Appeal in the later case of *C.I.R. v. Neumann* (1933), 12 A.T.C. 84).

If, in any year, a company, owing to the operation of reliefs, etc., given by the Income Tax Acts, is not liable to pay any tax, but is, owing to its current profits, able to pay a dividend, it can deduct tax from that dividend (subject to the provisions of § 7, 1931) and the shareholders are entitled to claim any refund on allowances to which they are entitled, whether or not the tax so deducted by the company will ever be paid to the Revenue Authorities. There is no analogy between Rule 20 and Rule 21 of the General Rules in this respect. The company is entitled to deduct tax on the dividend to the extent that the dividend is paid either out of its assessments (other than those under Rule 21, General Rules) plus income taxed at source, or out of its adjusted profits for that year plus its other income of that year (§ 7—1931).

Illustration.

A. Ltd., in 1932 made a profit of £6,000, but owing to previous losses being brought forward for Income Tax purposes, its assessment for 1933-34 was nil. In June, 1933, the company (its past debit balance on Profit and Loss Account having been written off against a surplus on revaluation of assets) paid a dividend of £3,000 "free of tax"

This is equivalent to £4,000 less tax, and those shareholders entitled by reason of the insufficiency of their other income to absorb their allowances can reclaim tax by reference thereto, although the company will not hand over any tax to the Revenue Authorities.

§ 13. --Rate for deduction of tax where the Standard Rate is altered.

Since the Resolution under the Provisional Collection of Taxes Act, 1913 (*see* Chap. I) is not passed until some days after the commencement of the year of assessment, any change in the rate of tax is not known in time for effect to be given to it in the deduction of tax from payments made since 5th April, but before the resolution is passed. (In practice it may be that all the dividend warrants have already been printed and are actually dispatched a day or two after the date of the resolution without being altered.) If the resolution changes the rate, tax will have been deducted at either too high or too low a rate, and this must be adjusted as provided by § 211—1918, and § 12—1930. It might be that the Act, when passed, would alter the rate again or that, as in 1931, a second Finance Act is passed which alters the rate, causing further adjustments.

The rules laid down are as follows :—

- 1) Any over-deduction to be made good may be made good by a reduction of the amount of tax deducted from the next payment of like nature made on the security or share in question after the passing of the Act imposing the tax for the year :

Provided that the foregoing provision shall not authorise the retention of any part of the amount over-deducted for more than one year from the passing of the Act so imposing the tax (§ 12 (1) (b), 1930).

Any amount made good under the above provisions shall—

(i) in the case of an over-deduction which is made good under paragraph (b) of this subsection, inure to the benefit of the person entitled to the payment on the occasion of which the over-deduction is made good; and

(ii) in any other case, inure to the benefit of the person entitled to the security or share in question at the date when the amount is made good,

irrespective, in either case, of whether or not he is the person who was entitled to the payment, or to the security or share, at the date when the original deduction was made (§ 12 (1) (c), 1930).

The above provisions apply to cases where the resolution provides for the charging of Income Tax at a rate *lower* than that charged for the previous year, where deductions of tax are made by a body corporate under Rule 19, General Rules, from payments of interest on any of its securities, or under Rule 20, General Rules, from payments of preference dividends (see below as to definition of preference dividend) (§ 12 (1), 1930). In any other case, the rules following apply.

Where in any year of assessment any half-yearly or quarterly payments have been made on account of any interest, dividends or other annual profits or gains, previously to the passing of the Act imposing the tax for that year, and tax has not been charged thereon or deducted therefrom, or has not been charged thereon or deducted therefrom at the rate ultimately imposed for the said year, the amount not so charged or deducted shall be charged under Schedule D in respect of those payments, as profits or gains not charged by virtue of any other Schedule, under Case VI, of Schedule D, and the agents entrusted with the payment of the interest, dividends

or other annual profits or gains shall furnish to the Commissioners of Inland Revenue a list containing the names and addresses of the persons to whom payments have been made and the amount of those payments, upon a requisition made by those Commissioners in that behalf (§ 211 (1), 1918).

Any person liable to pay any rent, interest or annuity, or to make any other annual payment, shall be authorized to make any deduction on account of tax for any year of assessment which he has failed to make previously to the passing of the Act imposing the tax for that year, or to make up any deficiency in any such deduction which has been so made, on the occasion of the next payment of the rent, interest or annuity, or making of the other annual payment after the passing of the Act so imposing the tax, in addition to any other deduction which he may be by law authorized to make, and shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt due from the person as against whom the deduction could originally have been made if the Act imposing tax for the year had been in force (§ 211 (2), 1918).

The last paragraph applies also to —

(a) any preference dividend (see below) from which a deduction of tax may be made under Rule 20 of the General Rules; and

(b) any payment for or in respect of copyright to which § 25, Finance Act, 1927, applies, and

(c) any royalty, or other sum paid in respect of the user of a patent (§ 12 (2), 1930)

The expression “preference dividend,” as used above means —

(a) a dividend payable on a preferred share at a fixed gross rate per cent., or

(b) where a dividend is payable on a preferred share partly at a fixed gross rate per cent. and partly at a variable rate, such part of that dividend as is payable at a fixed gross rate per cent., and the expression “share” includes stock (§ 12 (4), 1930).

Ordinary and other dividends are thus excluded from the rules so far stated.

Where on payment of a dividend (not being a preference dividend within the meaning of this section), Income Tax has, under Rule 20 of the General Rules, been deducted therefrom by

reference to a standard rate of tax greater or less than the standard rate for the year in which the dividend became due, the net amount received shall, for all the purposes of the Income Tax Acts, be deemed to represent income of such an amount as would, after deduction of tax by reference to the standard rate last-mentioned, be equal to the net amount received, and for the said purposes there shall in respect of that income be deemed to have been paid by deduction tax of such an amount as is equal to the amount of tax on that income computed by reference to the standard rate last-mentioned (§ 12 (3), 1930).

For the Rules applying to 1931-32, *see* Appendix IV

Illustration.

(1) On 12th April, 1930, B Ltd., declared and paid a dividend for the half-year ended 31st March, 1930, upon its 6% Preference Shares. The increase in the Standard Rate to 4s 6d was not then known, and Income Tax was accordingly deducted at 4s. 0d., the rate for 1929-30. In paying the dividend to 30th September, 1930, the company had therefore to deduct tax at 5/ 0d. in the £, being 4s 6d plus 6d under-deducted in April.

If a shareholder in the meantime had sold his shares, the new holder would suffer the additional deduction, but this would be taken into account in fixing the transfer price of the shares.

(2) On 12th April, 1930, B Ltd., also declared and paid a dividend of 12% upon its Ordinary Shares X., the holder of 1,000 £1 shares, therefore received a dividend made up as follows:—

	£	s.	d.
12% on 1,000 shares of £1 each	120	0	0
Less Income Tax at 4s 0d. in £	24	0	0
	<hr/>		
Net amount	£96	0	0

X. must include in his Return this net amount grossed up as if it had suffered tax at 4s. 6d. in the £, *i.e.*, as if it were a gross dividend of

£96	×	$\frac{20s.}{15\frac{1}{2}d.}$	=	..	..	..	£123	17	5
Less tax at 4s. 6d. in £				..	..	..	27	17	5
							<hr/>		
							£96	0	0

If X. is exempt from tax by reason of allowances, he can reclaim £27 17s. 5d. although only £24 was deducted. On the other hand, if he is a Sur-tax payer, then he will pay Sur-tax on the £3 17s. 5d. excess.

§ 14. --Reserves for Income Tax.**(a) Private Firms.**

Owing to the high rate of tax, it is often thought desirable for private firms to make a reserve for the Income Tax payable before dividing profits, but this presents some difficulties, since various complications are introduced owing to the fact that individual partners may have different claims in respect of life assurances, allowances and deductions.

Notwithstanding this, the reserve can, in most cases, be estimated with sufficient accuracy, and the best method of dealing with it is to debit each Partner's Current Account with the appropriate part of the reserve applicable to him, and to credit the Income Tax Reserve Account, in the name of each partner, with that amount. When the tax is paid, the actual amount applicable to each partner should then be charged to his separate Reserve Account. The balance of this account will then show, at any time, the amount each partner has in hand to meet Income Tax liabilities.

Where this is not done, a general Income Tax Reserve should be credited by debiting the Profit and Loss Account. When the actual tax is paid, the tax should be apportioned over the partners as above-mentioned, and debited to their Current Accounts, the reserve for Income Tax being written back to the credit of the Partners' Current Accounts, in the proportion in which they share profits, and not in the proportion in which they share the tax.

On any alteration in the shares of the partners or in the constitution of the firm, any balance standing to the credit of the Income Tax Reserve Account should be written back to the Partners' Accounts, on the basis on which it was credited.

It is perhaps more usual, however, not to create any separate Reserve Account, but to compute the amount which each partner must leave on Current Account to meet his share of the firm's income tax liability, restricting cash drawings accordingly.

When making reserves for Income Tax, it should particularly be remembered that the reserve should be provided only in respect of amounts upon which the concern itself is liable to bear tax. Thus, so far as Income Tax has been suffered by deduction at source or is recoupable by deduction from charges under Rule 19, General Rules, a reserve is not necessary. A reserve must be made for Income Tax deducted under Rule 21, but not yet paid over.

The whole point to consider is not what Income Tax a firm will pay, but what amount must be reserved for, in respect of their own profits.

The following Illustration demonstrates the application of the above remarks :—

Illustration.

A. & F. Jones started business on the 1st January, 1933. They share profits and losses equally, and introduce an equal amount of capital, viz., £10,000 each. A. Jones is married, with one child under 16; F. Jones is single. Neither has any other income.

They desire a reserve to be made in respect of Income Tax and submit the following Profit and Loss Account showing the result of their first year's trading. All charges are payable quarterly on 31st March, 30th June, 30th September, and 31st December.

It is desired to show—

- (1) The Appropriation Account.
- (2) The Current Accounts.
- (3) The Income Tax Account.
- (4) The Royalties Account.

Ignore Schedule A tax, being wholly deductible from rent.

INCOME TAX.

A & F JONES

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED

Dr	31st DECEMBER, 1933				Cr		
	£	s	d		£	s	d
Trade Expenses	1,100	0	0	By Gross Profit	10,810	0	0
Salaries	2,400	0	0				
Royalties on Patents	500	0	0				
Rent	500	0	0				
Rates	80	0	0				
Annuities	100	0	0				
Interest on Loans	200	0	0				
Repairs to Premises	90	0	0				
Interest on Capital	1,000	0	0				
Balance Net Profit	4,840	0	0				
	£10,810	0	0		£10,810	0	0

Dr PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX. Cr

	£		£
To Adjusted Profit	6,640	By Net Profit	4,840
		.. Royalties	500
		.. Annuities	100
		.. Interest on Loans	200
		.. Interest on Capital	1,000
	6,640		£6,640

Assessments --

1932-33—Actual Profits, 12ths of £6,640 = £1,660.

1933-34—Profits of first 12 months -- £6,640.

Since the capitals are equal, and no salaries are payable, these assessments are divisible equally

Computation of tax payable

	1932-33		1933-34	
	A Jones	F Jones	A Jones	F Jones
Shares of Assessment	£830	£830	£3,320	£3,320
Deduct Annual Charges				
.. Royalties	£500			
.. Annuities	100			
.. Interest on Loans	200			
	£800 (a)	100	400	400
	730	730	2,920	2,920
Deduct Allowances				
.. Earned Income	£146 (b)	146	300	300
.. Personal	150	100	150	100
.. Child	50	50	50	
	146	246	500	400
Taxable Incomes	£484	£484	£2,420	£2,520
Chargable at 2/6	(£175) 21 17 6	(£175) 21 17 6	(£175) 21 17 6	(£175) 21 17 6
at 5/-	(209) 52 5 0	(309) 77 5 0	(2,245) 561 5 0	(2,345) 586 5 0
			£583 2 6	£608 2 6

Tax to be borne by firm	£173 5 0	£1,191 5 0
Add tax on charges £200 at :	50 0 0	(£800 at 5/-) 200 0 0 ✓
Total Assessments	£223 5 0	

Notes.—

(a) The charges deductible are those *payable* in the year of assessment.

(b) Where charges are paid out of earned income, the earned income allowance is restricted to one-fifth of the statutory income since this is less than the earned income, and allowance cannot be granted on an amount which is being paid over to some other person.

PROFIT AND LOSS APPROPRIATION ACCOUNT

	£	s	d		£	s	d
To A Jones—one-half	2,420	0	0	By Balance from P & L Acc	4,840	0	0
„ F Jones—one-half	2,420	0	0				

Dr

PARTNERS' CURRENT ACCOUNTS

Cr.

	A Jones			F Jones				A Jones			F Jones		
	£	s	d	£	s	d		£	s	d	£	s	d
To Income Tax Account							By P & L Appropriation Account						
1932-33 tax	74	2	6	99	2	6		2,420	0	0	2,420	0	0
✓ 1933-34 tax—													
proportion to 31-12-													
Dec., 1933—													
three-quarters	437	6	11	456	1	10							
„ Balance c/d	1,908	10	7	1,864	15	8							
	£2,420	0	0	2,420	0	0		£2,420	0	0	2,420	0	0

Dr

INCOME TAX ACCOUNT

Cr.

	£	s	d		£	s	d
To Balance, Reserve c/d—				By Annuity Account	25	0	0
1932-33 Asst	£223	5	0	„ Interest on Loans	50	0	0
„ 1933-34 do	1,043	8	9	„ Royalties—			
				£500 at 5/-	125	0	0
				✓ „ Current Accounts—			
				A Jones	511	9	5
				F Jones	555	4	4
	£1,266	13	9		£1,266	13	9

INCOME TAX.

ROYALTIES ACCOUNT

		£	s	d			£	s	d
1933					1933				
Mar. 31	To Cash, Royalty	£150	0	0	Dec 31	By P & L Account	500	0	0
	Less Tax at								
		15	0	0					
				95	15	0			
June 30	.. do			95	15	0			
Sept 30	.. do			95	15	0			
Dec 31	.. do			95	15	0			
	.. Income Tax Account	125	0	0					
		£500	0	0			£500	0	0

Notes to Illustration

- (1) Tax on Royalties on Patents should be deducted at the time of payment (Rule 19, General Rules).
- (2) The tax in respect of the Annuity, Interest on Loans, and Royalties will be collected at the source, i.e., from Messrs. A. & F. Jones consequently they will not have paid over to the various parties the gross amounts as shown in the Profit and Loss Account, but merely the net amounts, i.e., less Tax, as shown, for instance, in the Royalties Account above.
- (3) As this Firm commenced business on the 1st January, 1933, they will be liable to tax for the period from 1st January, 1933, to 5th April, 1933, in respect of the fiscal year 1932-33. It is usual to keep the matter of the first assessment open until the first accounts are available. Strictly, the tax for 1932-33 should be paid on 1st January and 1st July, 1933, but in practice this also would be kept open until the accounts were available and the proper assessment made. Only three-quarters of the 1933-34 tax is reserved for, since the assessment relates to the year from 6th April, 1933 to 5th April, 1934, and only a period of nine months of this year falls into the accounting year ended 31st December, 1933.

(b) Limited Companies.

In the case of limited companies, the high rate of tax renders it desirable that a reserve should be made. The fiscal year, extending from 6th April to

5th April, rarely coincides with the financial year of the company, and where reserves are made it is usual to provide at least for the portion of the fiscal year accrued up to the date of the balance sheet. In arriving at the reserve it is sometimes thought necessary to provide only for the amount payable less any sums that will be recouped during the remainder of that fiscal year from shareholders where the dividends are payable less tax.

Since Income Tax is deductible at the rate in force at the date when the dividends, interest, etc., become payable, however, it is common practice not to take credit for tax until it is actually recouped, except perhaps in the case of dividends payable immediately after the date of reserving. Where no tax is payable in any year on direct assessments or by deduction from taxed income, full reserve must be made for any tax deducted by the company which will be assessed under Rule 21, General Rules, in respect of interest, etc., payable.

If it is the custom to declare dividends "free of tax", and the date of the balance sheet is prior to the 1st January, although Income Tax is not yet due, the tax accrued to that date should be reserved for, since, the dividends are paid "free of tax", no tax can be recouped from the shareholders, and the whole of the tax payable will be chargeable against the Profit and Loss Account. Where the assessable profit is large, the sum payable will be considerable, and if not brought into account, the balance of available profit might permit of a higher dividend being paid than would have been the case had provision been made for the accrued tax.

As has already been stated every dividend warrant issued by a company must show the gross amount of

the dividend, the rate and amount of Income Tax appropriate thereto, and the net amount actually paid (§ 33 -1924). This is particularly important in respect of dividends "free of tax," in which case the amount paid represents a net sum---*i.e.*, a dividend of £30 "free of tax" paid in 1933-34 would be shown :—

Gross	£40 0 0
Less tax at 5	10 0 0
Net Amount	£30 0 0

Illustration.

X, Ltd. was assessed for 1932-33 at £10,000 and for 1933-34 at £12,000. Its accounts are made up annually to 31st December. Debenture interest of £1,000 per annum is paid half-yearly on 30th June and 31st December. Leasehold premises are held at a ground rent of £60 payable on 30th June annually, the Net Annual Value for Schedule A being £300.

The dividends are paid on 16th January annually, at 6% on 12,000 £1 Preference shares and at 10% free of tax on 12,000 £1 Ordinary shares.

Show the Income Tax Account for the year ended 31st December, 1933.

Method (1)

Dr.		INCOME TAX ACCOUNT	
		1933	1934
1933.		Jan 1	Dec 31
Jan. 1	To Cash (1933-34 Assessments)		By Balance Reserve brought fths of 1932-33 Assessments, viz—
	Sch A £10,000 at 5	500 0 0	Sch A 500 0 0
	D £10,000 at 5	2 00 0 0	D 1 875 0 0
Dec. 31	By Balance Reserve being fths of 1933-34 Assessments		1 000 5 0
	Sch A 4 06 5 0		By Preference Dividend Account, £720 at 5
	D 2 250 0 0	June 30	Ground Rent, £60 at 5
			15 0 0
			By Debenture Interest Account, £500 at 5
		Dec 31	do
			P & L Account
			125 0 0
			2,305 0 0
			£ 4,881 5 0
			£ 4,881 5 0

Method (2).

The only difference would be in the reserves which would take into account tax recoupable from the Preference dividend payable on 15th January

The opening Sch. D reserve would be .		
Assessment £10,000 at 5	£2,500	0 0
Less Recoupable from Preference dividend, £720 at 5	180	0 0
	£2,320	0 0
Reserve—Nine months' proportion thereof	£1,740	0 0

The closing reserve would be similarly computed. It is not practicable to make minute adjustments for accrued interest, etc.,

§ 15. **Assessment of Share Profits.**

Where profits are made on the promotion of a company and these take the form of shares issued as fully paid, the usual method of dealing with the assessment in respect thereof is either to have the shares valued, tax being paid on any excess of such value over the actual cost to the parties of obtaining the shares, or for the assessment to stand over for a period of three years, the parties to account in the meantime for any shares sold by them during that period, and if such shares are sold at a price exceeding the cost thereof tax to be paid on the excess. At the end of the period the shares remaining unsold to be valued at a price to be agreed by the Commissioners according to any evidence that may be available, such as rates of dividend paid, market quotations, etc., and tax to be paid then on the amount by which such valuation exceeds the original cost.

It would seem, therefore, by analogy, that if profits of this nature are assessable in the first instance, and

it be found on the final valuation that an actual loss has been sustained, such loss should be charged against profits under Schedule D, but it is more than probable that the Commissioners would resist such a contention, on the grounds that such transactions do not fall within the description of a trade or profession (Cases I and II, Schedule D), but are within Case VI of Schedule D; and the losses could therefore be utilised and carried forward only against Case VI assessments (*see* Chap. VII, § 5).

Where a company declares a dividend to be satisfied by the transfer of shares or stock in other companies held by the company as an investment (termed a "scrip dividend"), the amount thereof must be treated by the recipients as a "free of tax" dividend of an amount equal to the real value of the shares or stock so transferred (*Pool v. Guardian Investment Trust* (1922), 8 T.C. 167). Where the shares cannot be readily valued the amount of the grossed dividend as declared must be included in the return, any adjustment being made when the shares are sold, or at the end of three years, similarly to the position explained above.

§ 16. Error or Mistake.

If any person who has paid tax charged under an assessment to Income Tax made for any year under Schedule D, or according to the Rules applicable to that Schedule, alleges that the assessment was excessive by reason of some ERROR OR MISTAKE IN THE RETURN OR STATEMENT (*e.g.*, accounts) made by him for the purposes of the assessment, he may, at any time not later than six years (§ 27—1926) after the end

of the year of assessment within which the assessment was made, make an application in writing to the Commissioners of Inland Revenue for relief.

On receiving any such application the Commissioners of Inland Revenue inquire into the matter and give by way of repayment such relief (including any consequential relief from super-tax) in respect of the error or mistake as is reasonable and just ; but no relief will be given in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return or statement was in fact made on the basis or in accordance with the practice generally prevailing at the time when the return or statement was made.

In determining any such application the Commissioners of Inland Revenue must have regard to all the relevant circumstances of the case, and in particular must consider whether the granting of relief would result in the exclusion from charge to income tax or sur-tax of any part of the profits or income of the applicant, and for this purpose the Commissioners may take into consideration the liability of the applicant and assessments made on him in respect of other years.

Any person who is aggrieved by the determination of the Commissioners of Inland Revenue on an application made by him may, on giving notice in writing to those Commissioners within twenty-one days after the notification to him of their determination, appeal to the Special Commissioners.

The Special Commissioners must thereupon hear and determine the appeal in accordance with the principles to be followed by the Commissioners of

Inland Revenue in determining applications under the section and, subject thereto, in like manner as in the case of an appeal to them against an assessment under Schedule D, and the provisions of the Income Tax Acts relating to such an appeal (including the provisions relating to the statement of a case for the opinion of the High Court on a point of law) apply accordingly with any necessary modifications; but neither the appellant nor the Commissioners of Inland Revenue are entitled to require a case to be stated for the opinion of the High Court otherwise than on a point of law arising in connection with the computation of profits or income (§ 24—1923).

The above provisions apply to any assessment to sur-tax (§ 42 (3) 1927), and to assessments under Schedule E (§ 45 (8) 1927). It should be noticed that the relief is in respect of error or mistake in the return or statement made by the taxpayer. Where, therefore, he has made no return and estimated assessments have become binding, he cannot afterwards avail himself of the section to obtain relief.

CHAPTER V.

Schedule D.

CASES III, IV AND V.

§ 1 INCOME OF UNCERTAIN ANNUAL VALUE

2 FOREIGN AND DOMESTIC PROFITS

- (a)* Domicile of Taxpayer
- (b)* Residence of Taxpayer
- (c)* Control of Business
- (d)* Dominion and Foreign Securities
- (e)* Dominion and Foreign Possessions
- (f)* Case I or Case V, Sch. D
- (g)* Legal Decisions as to profits earned abroad, but assessable in the United Kingdom
- (h)* Profits earned in the United Kingdom by persons not resident therein,
- (j)* Method of Assessment of Non-Residents
- (k)* Foreign Companies earning profits partly in and partly outside the United Kingdom

CHAPTER V. SCHEDULE D.

CASES III, IV AND V.

§ 1. **Income of Uncertain Annual Value.**

Under Case III of Schedule D is assessed income from $3\frac{1}{2}\%$ War Stock (except Beuter Bonds, which are taxed at source) and Exchequer Bonds; the discount on Treasury Bills; bank and other short loan interest from which tax is not deductible at source, not being "yearly interest"; dividends from public revenue not exceeding £2 10s. 0d. per half-year (since tax is not deducted at source therefrom), and Interest on Post Office issues of various Government Stocks (*see* Chap. III, § 3).

Tithes, fines for renewal of leases, etc. (assessed prior to 1927-28 under Schedule A), profits on all securities bearing interest payable out of the public revenue (except those charged under Schedule C) and on all interest of money not being annual interest payable or paid by any person whatever, are charged under this Case.

If the Commissioners find that lands charged under Schedule B on the assessable value, and which are occupied by a dealer in cattle or a dealer in or seller of milk, are insufficient for the keep of the cattle brought on the lands SO THAT THE ASSESSABLE VALUE AFFORDS NO JUST ESTIMATE OF THE PROFITS, they may require a statement of the profits to be delivered and charge under Case III the excess of the profits over the Schedule B assessment.

For 1933-34 onwards, any (share interest) or (loan interest) paid by a co-operative society or similar registered society is chargeable on the recipient under Case III (§ 32 - 1933) (*see* Chap. IX, § 7).

The basis of assessment under Case III is similar to that under Schedule E.

The assessment for the year in which the income first arises is on the full amount of the profits or income arising within that year. For the year following the year during which the income first arose the liability is to be based upon the income of the year of assessment, unless the income first arose on the 6th day of April in the preceding year. If the income first arose on the 6th day of April in the preceding year, or on some day other than the 6th day of April in the year next before the preceding year, the taxpayer is entitled to claim that the assessment shall be reduced to the actual income of the year of assessment. If the tax has already been paid, the claim is for repayment of the excess tax paid. This claim must be made to the Inspector of Taxes within twelve months after the end of the year of assessment.

The above may be summarised thus : -

Date when Income first arose	Year of Assessment	Basis of Assessment Actual Income received during
6th April, 1930	1930-31	Year ended 5th April, 1931
" "	1931-32	Year ended 5th April, 1931, or Year ended 5th April, 1932, if claimed by taxpayer
" "	1932-33 *	Year ended 5th April, 1932
After 6th April, 1930 and before 6th April, 1931	1930-31	Year ended 5th April, 1931.
" " "	1931-32	Year ended 5th April, 1932
" " "	1932-33	Year ended 5th April, 1932, or Year ended 5th April, 1933, if claimed by taxpayer
" " "	1933-34 *	Year ended 5th April, 1933

In all subsequent years the basis of assessment is the actual income received during the preceding year in the same way as* above (§ 17—1922) ; but see below for adjustments necessary when the source of income ceases. Income Tax is chargeable on the basis of the income of the preceding year even if no income arises from the source in the year of assessment (§ 22—1926).

If in any year of assessment any person charged or chargeable in respect of any income under Case III ceases to possess any particular source of any such income or any part of any such source, Income Tax in respect of the income from that source or that part is to be computed separately, and the assessment for the year in which the source or part is disposed of is based upon the income therefrom arising from 6th April in that year to the date of ceasing to possess such source or part. The Commissioners of Inland Revenue may then raise an additional assessment to bring the assessment for the penultimate year up to the actual income of that year (§ 30—1926).

If in any year any person acquires a new source or an addition to any source of income, the assessments thereon must be made in accordance with the rules already stated above for new sources (§ 30—1926).

Illustrations.

(a) A. had £10,000 on deposit at his bankers. On 31st March, 1931, he withdrew £4,000. The interest received was as follows --

Year ended 31st March, 1929,	£300
" " " " 1930,	£320.
" " " " 1931,	£280.

The assessments would be as follows :—

		Amended to :					
Year	Original Assessments	On £6,000 left on deposit	On £4,000 withdrawn			Total	
1929-30	£300	£300 - £180	£320	£128	(being penultimate year)		£308
1930-31	£320	£320	£192	£280	£112		304
1931-32		£280 - £168					168

Thereafter, the assessments will be upon the income arising in the preceding year, since only the £6,000 is then involved.

(b) B had £10,000 on deposit at his bankers. On 1st January, 1931, he deposited a further £6,000. The interest credited to his Current Account was as follows

Year ended	31st December, 1929	..	..	£299
Half-year ended	30th June, 1930		..	140
"	31st December, 1930		.	160
"	30th June, 1931 on £10,000			150
	on £6,000			90
"	31st December, 1931 on £10,000			155
	on £6,000			93

Year	Assessments on £10,000	On £6,000
1930-31	Preceding Year £299	Nil, no income having been received
1931-32	do £300	Actual income of year £183.
1932-33	do £305	Preceding year £183. This may be reduced to 'actual' if less than £183

Thereafter the income from the £16,000 will be assessed on the "preceding year" basis. For purposes of Income Tax, deposit interest is taken to arise where it is actually credited to the account of the depositor.

Where a security, carrying interest which is payable without deduction of tax, is sold *cum* dividend between two dividend dates, the portion of the purchase price representing the accrued interest to the date of sale is not assessable to Income Tax in the hands of

the vendors (*Wigmore v. Summerson & Sons* (1925), 94 L.J.K.B. 836). The recipient is assessed in respect of the full dividend or interest in such cases.

The proportion representing interest included in instalments on a moneylender's promissory notes, received after his death, is assessable under Case III on his legal personal representative (*Bennett v. Ogston* (1930), 15 T.C. 374).

Where Victory Bonds are transferred to the Commissioners of Inland Revenue in payment of estate duty, the accrued interest forming part of the value at which the Bonds are accepted is not assessable to Income Tax (*Monks v. Fox's Executors* (1928), 13 T.C. 171).

§ 2. Foreign and Dominion Profits.

(a) Domicil of Taxpayer.

By domicil is meant the place of abode of an individual to which, when absent, he intends to return. It may be a domicil of origin or choice.

The domicil of origin is not the actual place of birth, but that arising from a man's birth and connections. Thus the domicil of origin of a son of an English father follows that of the father, even though the child be born abroad.

The domicil of origin cannot be lost by being merely abandoned, but remains the domicil of the individual until a new one is acquired; and therefore, in order to substitute a domicil of choice he must acquire such new domicil, and abandon his domicil of origin or previous domicil of choice, after manifesting his intention to do so (*Somerville v. Somerville*, 5 Ves. 750; *Bonneral v. De Bonneral*, 1 Curt. 864).

If, however, the domicile of choice is abandoned the domicile of origin revives (*King v. Foxwell*, 3 C.D. 518).

A domicile may also be acquired by operation of law, e.g., until comparatively recently a domicile in India was at law a domicile in the Province of Canterbury.

Primâ facie the place of residence is the domicile, but this may be rebutted. A man may have different residences in different countries, and yet he will have only one legal domicile (*Cooper v. Culvalader*, (1904), 5 T.C. 107).

Thus, a man may be resident in this country and carrying on business here, without having abandoned his foreign domicile or his ultimate intention to return thereto; and, while he is subject to taxation in the ordinary way on the profits derived from his English business, he nevertheless may gain a decided advantage in connection with his foreign profits.

(b) Residence of Taxpayer.

A person ordinarily resident in the United Kingdom is assessable to Income Tax, even though temporarily absent for some portion of any year, but if he has retained a foreign domicile his liability in respect of foreign income will be qualified by that fact.

A person is not chargeable to tax under Schedule D as a person residing in the United Kingdom, in respect of profits or gains received in respect of possessions or securities out of the United Kingdom WHO IS IN THE UNITED KINGDOM FOR SOME TEMPORARY PURPOSE ONLY and not with a view or intent of establishing his residence therein, AND WHO HAS NOT actually RESIDED in the United Kingdom at one time or several times *for a period equal in the whole to six months in any year of assessment*, but if any such

person resides in the United Kingdom for the aforesaid period he is so chargeable for that year (Rule 2, Schedule D, Miscellaneous Rules).

Persons not resident in the United Kingdom are liable to assessment in so far as they derive income from real or personal estate, trade or employment in the United Kingdom (General Rules applicable to all Schedules); with certain exceptions, no allowances or deductions can be claimed by such persons (§ 24—1920). The exceptions are dealt with in Chapter II, § 16.

Residence is a question of fact, to be decided upon by the Commissioners. Domicil and residence are matters on which an appeal can be made to the Special Commissioners from a decision of the Commissioners of Inland Revenue (§ 27—1924).

A person can have but one domicil, but he may be resident in several countries.

Whilst the provisions of Rule 2 (Sch. D, Miscellaneous Rules), set out above, are explicit, it must be borne in mind that a person of foreign or Dominion domicil who comes to the United Kingdom more or less regularly may be held to be resident therein even if in any one year he does not remain in this country for six months or more. The reasons for such visits are really immaterial, and after three or four years of such visits (even of, say, three months per annum) it may be looked upon as being part of his normal and habitual manner of life to reside here. Where his arrangements indicated from the start that regular visits for substantial periods were to be made, he would be regarded as resident as and from the first year. Residence does not imply keeping up an establishment;

the physical fact of being in the country, *e.g.*, living in hotels, etc., is just as much residence.

The question of each year's liability must be looked at as a separate issue, but the facts over a period of years can be looked at so as to get the "whole continuous story" as bearing on the year in question (*Lerene v. C.I.R.* (1928), 13 T.C. 486 (*see* Viscount Sumner's judgment)).

A person maintaining an establishment here is deemed to be resident here in any year in which he visits this country, no matter for how short a period. Where a person has been resident in the United Kingdom in the past, it is very difficult for him to prove non-residence in any subsequent year, unless he is actually out of the country for the whole year and can prove that it is not his intention to return.

A seafaring man, absent for the whole year, is still "resident" if he maintains a residence or (apparently) a wife and family here (*Rogers v. Inland Revenue* (1897), 1 T.C. 225). But if he receives and banks his salary abroad, he will be assessed only on remittances under Case V, and not under Schedule E, as would be the case if he received his salary in the United Kingdom. Seafaring cases, however, are not of general application.

A finding by the Commissioners of Income Tax that a company which is registered abroad is resident in the United Kingdom for the purposes of assessment to Income Tax, on the ground that the control and directing powers of the company are in England is, if there is evidence to support it, conclusive, provided always that the Commissioners place the correct interpretation on the evidence (*American Thread Co. v. Joyce* (1913), 29 T.L.R. 266).

When a person formerly not resident is held to become resident in any year he is regarded as resident for the whole fiscal year (*Back v. Whitlock* (1932), 1 K.B. 747).

(c) Control of Business.

The place from which a business is controlled is most important in certain cases, since, even though a business may be domiciled or resident abroad, if it is controlled from this country it will be deemed to be carried on here, and will be assessable accordingly under Case I, Schedule D, Rules (*De Beers Consolidated Mines v. Howe* (1906), A.C. 455). (See Chap. V, § 2 (g) for further consideration of this subject.)

(d) Dominion and Foreign Securities.

Under Case IV of Schedule D the tax in respect of income arising from securities in any place out of the United Kingdom, is to be computed on the full amount thereof arising in the year preceding the year of assessment, whether the income has been or will be received in the United Kingdom or not, subject, in the case of income not received in the United Kingdom, to the same deductions and allowances as if it had been so received, and to the deduction (where such a deduction cannot be made under any other legal provision) of any sum which has been paid in respect of Income Tax in the place where the income has arisen (subject to the qualification dealt with under Dominion Income Tax Relief in Chapter X), and to a deduction on account of any annual interest or any annuity or other annual payment payable out of the income to any person not resident in the United Kingdom.

The above Rule does not apply— •

- (a) to any person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom; or
- (b) to income arising from such securities as aforesaid, which form part of the investments of the Foreign Life Assurance Fund of an Assurance Company;

the tax in any such case is to be computed on a sum not less than the full amount, so far as it can be computed, of the sums which have been received in the United Kingdom in the preceding year without any deduction or abatement. (*See also Chap. X, § 21, as to Irish Free State securities.*)

“A security is a possession such that the grantee or holder of the security holds as against the grantor a right to resort to some property or some fund for the satisfaction of some demand, after whose satisfaction the balance of the property or fund belongs to the grantor. There are two owners, and the right of the one has precedence over the right of the other. A share in a corporation does not answer the above description” (*Singer v. Williams* (1921), 1 A.C. 41, *per Lord Wrenbury*).

“The expression ‘ordinary residence’ occurs again and again in the Income Tax Acts, where it is contrasted with usual or occasional or temporary residence; and I think that it connotes residence in a place with some degree of continuity, and apart from accidental or temporary absences. So understood, the expression differs little in meaning

from the word 'residence' as used in the Acts; and, I find it difficult to imagine a case in which a man while not resident here, is yet ordinarily resident here" (*Levene v. C.I.R.* (1928), 13 T.C. 486 *per* Lord Cave).

"I do not attempt to give any definition of the word 'resident.' In my opinion, it has no technical or special meaning for the purposes of the Income Tax Act. 'Ordinarily resident' also seems to me to have no such technical or special meaning. In particular, it is in my opinion impossible to restrict its connotation to its duration If it has any definite meaning I should say it means according to the way in which a man's life is usually ordered (*Levene v. C.I.R.*, *supra*, *per* Lord Warrington of Clyffe).

" the word 'resident' indicates a quality of the person charged and is not descriptive of his property, real or personal. To ask where he has his residence is often a convenient form of inquiry but only as leading to the question: 'Then where is he resident himself?' " (*Lysaght v. C.I.R.* (1928), 13 T.C. 511, *per* Viscount Sumner).

" if the periods for which and the conditions under which he stays are such that they may be regarded as constituting residence, it is open to the Commissioners to find that in fact he does so reside, and, if residence be once established, 'ordinary residence' means in my opinion no more than that the residence is not casual and uncertain but that the person held to reside does so in the ordinary course of his life" (*ibid.* *per* Lord Buckmaster).

(e) Dominion and Foreign Possessions.

Under Case V of Schedule D the tax in respect of income arising from stocks, shares or rents in any

place out of the United Kingdom, is to be computed on a sum not less than the full amount thereof arising in the preceding year, whether the income has been or will be received in the United Kingdom or not, subject, in the case of income not received in the United Kingdom, to the same deductions and allowances as are provided in Rule 1 of Case IV of Schedule D.

This Rule does not apply

- (a) to a person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom; or
- (b) to the income therein described arising from the investments of the Foreign Life Assurance Fund of an Assurance Company;

and in such cases the computation is to be made on remittances as in the case of possessions other than stocks, shares, or rents (*see* also Chap. X, § 21, as to Irish Free State Possessions).

Where a foreign company, previously assessed under Case I, Schedule D, removes its control abroad and consequently the dividends received therefrom are assessable under Case V, Schedule D, such assessments cannot include any dividends distributed while the company was controlled in the United Kingdom (*Bradbury v. English Sewing Cotton Co., Ltd.* (1923), A.C. 774).

The tax in respect of income arising from possessions out of the United Kingdom, other than stocks, shares or rents, is to be computed on a sum not less than the full amount of the actual sums

received in the United Kingdom from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account, in respect of any such remittances, property, money or value brought or to be brought into the United Kingdom, during the preceding year, without any deduction or abatement other than is allowed in Case I, Schedule D (Schedule D Rules, Case V).

It will be seen from the above that both remittances and constructive remittances attract liability, *e.g.*, stocks purchased abroad out of the income from the possession and remitted to this country, settlements of contra accounts, set-off, income imported in kind, will all count as remittances.

(Prior to 1927-28 the basis of assessment of income from foreign and Dominion securities under Case IV was upon the income receivable in the year of assessment, and from possessions under Case V upon a three years' average of the income receivable from stocks, shares and rents, or a three years' average of remittances from other possessions. Further, for the first three years of ownership of a Dominion or foreign possession, if the tax paid exceeded that which would have been paid if the owner had been assessed for each year on the actual income of that year, the excess could be recovered (§ 26—1924). These provisions were repealed by the Finance Act, 1926.)

For 1927-28 and succeeding years, the Rules governing assessment in the early years of possession of a source of income assessable under Cases IV or V,

and the discontinuance of, additions to, and the sale of part of, a source under those cases, are the same as those already enumerated for Case III (see Chap. V, § 1).

All profits or income in respect of which a person is chargeable under Case III (excluding the investment income of Dominion and Foreign Life Assurance Companies, and the profits of cattle dealers and milk sellers), Case IV or Case V may be respectively assessed and charged in one sum (§ 30—1926).

Where any income previously assessable under Case IV or Case V becomes chargeable by deduction at source, the source is treated as discontinued, and the provisions governing discontinued sources apply accordingly. Similarly, where income previously charged by deduction at source becomes liable under Case IV or V, it is treated as a new source (§ 30—1926).

Stocks, shares and rents described in Rule 1, Case V, are one source of income and not several sources (*Diggines v. Forestal Land, Timber and Railways Co.* (1930), 15 T.C. 630), and one holding of shares cannot be distinguished from other holdings, but in view of the fact that additions and subtractions are to be separately assessed, this point is of little significance. When a business formerly assessed under Case V as a foreign possession becomes liable under Case I owing to change in the place of control, it is not to be assessed as a new business (*Fry v. Burma Corporation* (1930), 15 T.C. 113), but as a continuing business. When a business formerly assessed under Case I shifts control and becomes assessable under Case V, it would appear that the Case V assessment of the first year should be based on the income of the previous year, subject to *Bradbury v. English Sewing Cotton Co.* (see p. 223).

The same principle extends to the income of an individual who comes to this country after residing abroad. If such an individual had a source of income outside this country before coming here, this source is not treated as a new one for purposes of Income Tax (*Back v. Whullock* (1932), 16 T.C. 723).

Under the heading of possessions will come every source of income, except such as the Legislature has specifically termed securities. It includes, therefore, the interest which a person resident in this country possesses in a business carried on and controlled entirely abroad by a foreign firm (*Colquhoun v. Brooks* (1889), 59 L.T. 850). An assessment under Case V in respect of salary and commission payable in this country under a contract of employment as agent abroad for a British company, where the agent was resident in the United Kingdom, has been held to be bad, since the salary being paid in this country, no remittance was possible (*Pickles v. Foulsham* (1924), 93, L.J.K.B. 197). But in similar circumstances, where the salary was *payable* abroad, the agent was held to be liable under Case V on sums remitted to this country (*Fleming v. Wilkinson* (1925), 10 T.C. 416).

In the case of employments exercised wholly abroad, where the remuneration is payable abroad, the assessment will be on remittances under Rule 2, Case V. Any salary credited here is a "remittance." Crown officials paid out of the public revenue of this country are assessable under Schedule E, but an officer who serves at a foreign station and does not maintain a residence in the United Kingdom may claim to be a non-resident in any year in which his foreign service includes a complete fiscal year. In such a case as the

latter, a wife resident here may be assessed as a *feme sole*, but her husband's remittances out of his foreign salary or profits are not assessable upon her. But alimony received by a British woman from a foreign divorced husband has been held to be a receipt from a "foreign possession" (*C.I.R. v. Anderström* (1928), 13 T.C. 482).

It is provided by Rule 12, Schedule D, Cases I and II, that where any trade or business is carried on by two or more persons in partnership, and the control and management of such trade or business is situate abroad, such trade or business shall be deemed to be carried on by persons resident outside the United Kingdom, and the partnership shall be deemed to reside outside the United Kingdom, notwithstanding the fact that some of the members of the firm are resident in the United Kingdom, and some of the trading operations of the firm are conducted in the United Kingdom.

In such cases the firm is assessable in respect of the trading operations conducted in the United Kingdom to the same extent as, and no further than, a person resident abroad is assessable in respect of trading operations by him within the United Kingdom, and the assessment may be made in the name of any resident partner (Rule 12, Sch. D, Cases I and II).

In order that advantage can be taken of these provisions it is essential that the foreign operations be under the control of the foreign partners and that the partnership deed substantiates this fact; the foreign profits will then be assessable under Case V. If, however, all the partners reside in the United Kingdom the control will clearly rest in the United

Kingdom, and profits of the whole business will be assessable under Case I; but the practice is to exclude from the assessment the share of a non-resident partner in respect of profits earned abroad.

Where a foreign firm buys goods and a British firm sells them on joint account, the whole profits of the joint account are assessable as a partnership (*Morden Rigg & Eskrigge v. Monks* (1923), 8 T.C. 450).

(f) Case I or Case V, Schedule D.

So far as income arising from any trade, manufacture, adventure or concern outside the United Kingdom is concerned, tax will be charged under either Case I or Case V. For the profits of a business to be assessed under Case V it is essential that residence and control shall be outside the United Kingdom.

Conversely, a business carried on partly in and partly outside the United Kingdom, even though legally domiciled outside the United Kingdom, will be assessable in respect of all the profits wherever made, if it is shown that it is resident and controlled in the United Kingdom.

(g) Legal decisions as to profits earned abroad but assessable in the United Kingdom.

The following are epitomized statements of the principal cases dealing with the assessment of foreign and colonial profits.

Sully v. Attorney-General (1860), 2 Tax Cases 149

An American firm had a branch in England managed by a resident partner who bought goods for exportation to America where all profits were made

It was held that the firm exercised their trade in America and that their profits were not taxable except to the extent to which they were remitted to this country as the share of the resident partner.

Calcutta Jute Mills v. Nicholson (1876), 1 Ex D. 428.

An English company carried on business in India. Meetings of the company and of the English board were held in England, but the actual business operations took place in India under the entire control of an Indian director (appointed under powers by the English directors) and managing agents. Money was sent to England to meet expenses and pay dividends.

The company was held to reside in the United Kingdom and was liable in respect of all its profits, wherever made.

Cesena Sulphur Co. v. Nicholson (1876), 1 Ex D. 428.

An English company carried on business in Italy.

The English directors held meetings in England, but there was an Italian board who conducted all the company's business in Italy, one of the Italian directors being managing director. Moneys were remitted to England for the payment of English dividends.

The company was held to reside in the United Kingdom and was liable in respect of all its profits, wherever made.

Colquhoun v. Brooks (1889), 14 App. Cas. 493.

Brooks, resident in England, was a sleeping partner in a firm carrying on business in Australia. A portion of his profits was remitted to him and the remainder placed to his credit in Australia.

The portion not remitted was not assessable to Income Tax, but the profits remitted were assessable under Case V.

London Bank of Mexico and South America v. Apthorpe (1891), 2 Q.B. 378.

A banking company registered in England with its head office in London, where the company's affairs were controlled, and where the directors and shareholders met, had branches at Mexico and Lima. The branches carried on ordinary banking business, and in London only the London business of the branches was conducted.

It was held that the whole of the profits, whether remitted to England or not, were chargeable under Case I.

San Paulo Railway Company v. Carter (1896), A.C. 31.

A company was registered in England for carrying on a railway undertaking in Brazil.

The business was controlled by the directors in London where all meetings were held, and dividends were declared.

It was held that the company was chargeable upon all its profits whether remitted or not, under Case I.

Apthorpe v. Peter Schoenhofen Brewing Co. (1899), 80 L.T. 395

An English company was formed to acquire an American business from an American company, but as the American laws prevented foreign corporations from holding real estate, the American company was kept in existence.

The trading was carried on in America, but the directors of the English company had the right of control over the American company's affairs, which they delegated to an American committee consisting of the former directors of the American company. Only a sufficient proportion of profits to pay dividends to the English shareholders was remitted to England, but the dividends were declared by the directors in England.

Although the American business was the business of the American company, they held it merely as agents of the English company, and it was held that the English company was assessable on the whole of the profits made under Case I.

Gresham Life Assurance Society v. Bishop (1902), A.C. 287

An English assurance society re-invested abroad part of the interest arising from its foreign investments. Such interest was treated in the books as money received, and taken into account in arriving at the amount of profits.

It was held that taking such interest into account was not equivalent to a receipt in the United Kingdom, and Income Tax was therefore not payable on the part not remitted. (NOTE—This case relates to an assessment under Case IV of Schedule D, and since only the remittances from the interest on the investments of the foreign life assurance fund are chargeable (*see* p. 221), the case is thus to be distinguished from *Liverpool, London & Globe Insurance Co. v. Bennett* (*see* p. 233).)

Scottish Provident Institution v. Allan (1903) A.C. 129

The Institution had invested moneys in Australia, and remittances were sent to this country from time to time out of a mixed fund consisting of interest and repayments of capital. The sum remaining in Australia exceeded the total capital originally sent out for investment. It was held that, except where specific remittances could be identified with particular repayments of capital, the remittances must be presumed to consist of interest so long as the sums invested in Australia were at least equivalent to the capital originally sent out, but that a repayment of a capital sum directly remitted was not liable to assessment.

Kodak, Limited v. Clark (1903), 1 K.B. 505.

An English company held 98 per cent. of the shares in an American company, the remaining shares being held independently.

Although the English company had a preponderating influence it had never attempted, nor was it empowered, to control the management of the American company, otherwise than as a shareholder.

It was held that the American company was not carried on by nor was it the agent of the English company. The latter was, therefore, only assessable in respect of dividends received from the former.

De Beers Consolidated Mines v. Howe (1906), A.C. 455.

A Diamond Mining Company was incorporated and registered abroad. It had an office in London, and directors living in the United Kingdom by whom the real control was exercised in all the important business of the company except the actual mining.

The company was held to be resident in the United Kingdom and assessable on all its profits, wherever made.

Stanley v. Gramophone and Typewriter Co. (1908), 2 K.B. 89.

An English company held all the shares in a foreign company. The members of the board of management of the foreign company were directors of the English company, and the members of the board of supervision of the foreign company were nominees of the English company.

It was held that the foreign company was not the business of the English company, and therefore the English company was assessable only upon profits actually remitted from the foreign company. In order to show that the business of a foreign company is carried on by an English company, it is necessary to prove either that the foreign company is a fiction, sham, or simulacrum, and that in reality the English company is carrying on the business, or that the foreign company, if a real thing, is the agent of the English company.

The fact that an English company owns all the shares in a foreign company carrying on an independent business is not sufficient in itself to make the business of the foreign company a part of the business of the English company. The shares remain foreign possessions.

Ogilvie v. Kilton (1908), S.C. 1,003.

A British subject, resident in the United Kingdom, was the sole proprietor of a business in Canada, which was carried on for him by a Canadian manager, who accounted to him weekly. Full control and management remained with the proprietor, although not exercised by him, and he took all the profits and was liable for all the losses.

It was held that the business was carried on in the United Kingdom, and the proprietor was assessable on the whole of the profits under Case I.

New Zealand Shipping Co v Stephens (1907), 52 S.J. 113

A Shipping Company was registered in New Zealand, where the registered office was situated, business being transacted by a New Zealand directorate.

A separate board of directors met at the London office, where the books of the company were kept, comprising all their accounts. Dividends were declared in London, and general meetings were held both in London and New Zealand. The New Zealand directors carried out the New Zealand business and negotiated most of the freight contracts, but other important contracts were entered into in London, where all questions of policy were decided.

It was held that the company was, for Income Tax purposes, resident in the United Kingdom and assessable on all its profits.

Brown v Burt (1911), 81 L.J.K.B. 17

An American had, for many years, lived on board his yacht, which was anchored in tidal navigable waters in the county of Essex. He obtained provisions and necessaries from the nearest village. The yacht had always been kept fully manned and ready to go to sea at any moment.

It was held that the owner was a person residing in the United Kingdom, and was assessable to income tax accordingly.

Scottish Provident Institution v. Farmer (1912), S.C. 452.

A Scottish Insurance Company re-invested interest arising from American investments, in Bearer Bonds, which Bonds were transmitted to this country in the same year and were afterwards sold, the proceeds being received at the head office.

It was held that the sums realized on sale of the Bonds, being sums received in Great Britain in respect of interest on Foreign Securities, were chargeable with income tax for the year in which the proceeds of the sales had been received, although the interest had, in fact, been earned prior to that year.

Liverpool, London and Globe Insurance Co. v. Bennett (1912),
2 K.B. 41.

An English fire and life insurance company doing business outside the United Kingdom and holding investments abroad in respect of its fire business, and in respect of invested profits, re-invested the interest derived therefrom, which was not remitted to the United Kingdom

It was held that the interest on these investments formed part of the balance of profits and gains of the company, and was assessable under Case I (It should be noted that the investments were not part of a foreign life assurance fund)

Turnbull v. Foster (1913), 42 Sc L.R. 15

An Indian merchant resided in India with his wife during the whole of the year of assessment, not visiting the United Kingdom during that period. His usual residence was in India, but in every year prior to the year of assessment he had visited the United Kingdom, residing with his wife and family in a house purchased, in his wife's name, out of money belonging to her and himself.

During the year of assessment some of the children resided in this house.

It was held that during the year of assessment he was not chargeable with income tax as a person resident in the United Kingdom "The test of liability is not having a residence in the United Kingdom, it is residing in the United Kingdom" (Lord Trayner).

Drummond v. Collins (1915), 31 T.L.R. 482

An American testator left property in America to American Trustees to accumulate for minors till they became of age. The Trustees were directed to provide moneys for maintenance in their discretion out of the income of the share of each child.

The Children resided in England with their mother, who was their guardian, and to whom moneys were from time to time remitted for the education and maintenance of the children.

It was held that the trust estate was a foreign possession in respect of which the remittances were received, and that such remittances were therefore assessable to income tax under Case V, and that the guardian was chargeable

Egyptian Hotels Limited, v Mitchell (1915), 139 L.T. 247.

An English company carried on business in Egypt. It had amended its Articles of Association so that the Egyptian business was carried on and controlled by a local board, to the exclusion of any other board of directors.

The English directors met in England and dealt with the general and financial affairs of the company, and dividends were recommended by them and declared by general meetings held in England. Dividends to persons outside of the United Kingdom were satisfied out of profits obtained in Egypt.

The company was held to be liable to income tax only on so much of the profits of the Company as were remitted to this country, and not upon the profits earned in Egypt and distributed abroad.

Williams v. Singer and Others (1921), 88 L.J.K.B. 1151.

The Beneficiary of a Trust of Foreign Shares and Securities with English trustees was not a British subject nor domiciled in the United Kingdom. During the year of assessment she did not reside, nor possess a residence in the United Kingdom. The income was sent direct from the foreign country to the Beneficiary and never came to the United Kingdom.

Held that Cases IV and V of Schedule D refer to property chargeable and not to persons chargeable, therefore the Trustees were not assessable in respect to the dividends arising abroad.

Swedish Central Railway v Thompson (1925), 94 L.J.K.B. 527.

A company resides where the central management and control of its business is carried on, but if some part of its business is carried on in another country, it may reside in both places so as to be liable to taxation in both. A company incorporated in England constructed and worked a railway in Sweden, it subsequently let the railway to a Swedish Company, the control and management being removed to Sweden, shareholders' and directors' meetings being held there, and dividends declared there. The company retained a registered office in London, received and paid the dividends due to English shareholders, registered the transfer of shares held in England. The seal of the company was kept in England. The secretary of the company resided in London, where the Company had a banking account, and where its accounts were made up and audited. It was held that the company remained resident in England and was liable to be assessed under Case V.

Todd v. The Egyptian Delta Land and Investment Co. (1928),
14 T.C. 119.

The company was incorporated in England for the purpose of dealing in and developing land in Egypt. In 1907 it altered its Articles so to remove the control and management to Cairo, where, since 1907, the directors and secretary-general reside, all meetings were held, the seal, minute books, account books, transfer register, and banking account have been kept, the accounts made up and audited, and dividends declared and paid.

To meet the requirements of the English Companies Act, the company appointed a London secretary, who provides the company with a registered address (but no specific room or part of a room is appropriated to the company) and keeps the register of members, of directors and of bearer warrants, and makes the statutory Returns. The secretary has no power of attorney, a purely formal position and power to do only what is required to comply with the Companies Act.

It was held that incorporation under the Companies Act, and the consequential arrangements made to enable the provisions of the Act to be complied with did not make the company resident in the United Kingdom, and the company was not so resident.

From a consideration of the above cases the position with regard to profits earned abroad may be summarised as follows :—

If the business is controlled from the United Kingdom, then the profits will be assessed under Case I, Sch. D. If the business is controlled abroad, then persons resident in this country receiving profits from the business will be assessed under Case V. "Control," like "residence," is a question of fact.

(h) Profits earned in the United Kingdom by persons not resident therein.

Rule 5, General Rules applicable to all Schedules, provides that any person not resident in the United Kingdom, whether a British subject or not, shall be

charged in the name of any factor, agent or receiver having the receipt of any profits or gains belonging to such person, in the same manner and to the same amount as would be charged if such person were resident in the United Kingdom, and in the actual receipt thereof.

By Rule 14, General Rules, any such factor, agent or receiver so assessed may retain so much and such part of moneys coming to his hands as shall be sufficient to pay the assessment made upon him in relation to the foreign principal.

This Rule is intended to aid the Commissioners in recovering the tax and not to alter the incidence of taxation in any way; if the principal can be reached there is no need to have recourse to Rule 5 (*Tischler & Co. v. Aphthorpe* (1885), 49 J.P. 372); in this case the judge indicated that as Mr. Tischler was in the United Kingdom some four months in the year he was capable of being served with the prescribed statutory notices, and was the proper person to return the profits made by exercising trade within the United Kingdom.

The following are short particulars of important decisions on this matter: -

Tischler & Co. v. Aphthorpe (1885), 49 J.P. 372.

A French firm carried on a wine business in France. The senior partner visited England for about four months every year during which time he stayed at an hotel, and also visited customers and took orders.

A firm of London wine merchants acted as agents for the French firm and provided accommodation for the senior partner of the French firm.

The name of the French firm was shown over the premises of the London firm, and a clerk was paid by the French firm.

Wines sold were despatched sometimes direct to the buyer and sometimes to the London agents, the latter collecting all moneys and receiving a *del credere* commission for their services.

It was held that the French firm carried on a trade in the United Kingdom and were chargeable on the profits of all sales made in the United Kingdom.

Pommery & Greno v. Apthorpe (1886), 56 L T 24.

A French firm, carrying on business in France, shipped wines to England for sale. Sales were effected through a sole agent in England, who employed travellers on behalf of the French firm but received a commission covering his remuneration and expenses.

Orders were executed either from the English stock or direct from abroad, and were invoiced in the name of the French firm, all amounts due being collected by the agent and paid to an account in the name of the French firm.

It was held that the French firm were assessable on the profits of all wines sold in the United Kingdom.

Werle & Co v. Colquhoun (1888), 20 Q B D 753.

A French firm carrying on the business of wine merchants in France appointed a sole agent in England who received a commission on all the English sales, whether effected through his agency or not.

No stocks were kept in England but orders were taken by the agent on the French firm's behalf and were sent to the French firm, who forwarded the wine direct to the customer.

The cost of forwarding was paid by the customers, and the wine was at his risk after it left the cellars.

Payments were made by the customers in some cases to the French firm direct, and in others to the agent in London.

It was held that the French firm exercised a trade within the United Kingdom and was assessable in respect of the profits arising therefrom.

Grainger & Son v. Gough (1896), A C 325.

A French firm carrying on a wine business in France appointed an English firm to act as its agent in obtaining orders.

The orders were sent to the French firm who exercised its own discretion as to whether or not they should be executed.

The wines were sold from France, all expenses and risk falling upon the customer.

Payments were generally made to the French firm, but occasionally to the English agent, the receipts being always given by the French firm.

It was held that the French firm did not carry on a trade in the United Kingdom, and that the English agents were not answerable as such to pay Income Tax on the business of the French principals (It should be noted that in this case the contracts for sale and deliveries of goods were made in France, the agent was only a canvasser with no power to bind the principal)

James Wingate & Co v. Webber (1897), 3 Tax Cas 509

A Norwegian company holding all meetings in Norway owned a ship, the chartering of which was dealt with by a Glasgow firm, who collected and retained all moneys until required for payment of expenses or dividends

It was held that the company was not resident in the United Kingdom, but exercised a trade within the United Kingdom, for which the Glasgow firm, as agents, were assessable.

Watson v. Sandie & Hull (1898), 1 Q.B. 326.

A foreign firm consigned goods to an English firm for sale on commission, who sold the goods in their own name and collected the receipts, and rendered an account to the foreign firm, debiting it with their charges and remitting the balance

It was held that the foreign firm exercised a trade in the United Kingdom, and were assessable for the profits thereof through their agents

Turner v. Rickman (1898), 4 Tax Cas. 25

A foreign company had agents in England, but orders obtained by the agents were submitted to the foreign principals before being accepted. The goods were shipped to the agents who distributed them and generally collected the money

It was held that the foreign company exercised a trade in the United Kingdom and was assessable accordingly.

Crookston Bros. v. Furtado (1911), 5 Tax Cas. 602

A French company owning mines in Algeria employed a Glasgow firm as sole agent for the sale of the mineral in the United Kingdom.

Contracts were made in the United Kingdom but no stock was kept there, and delivery of the goods was made out of the United Kingdom.

Contracts entered into provided for payment of the goods by cash in London, but such payment was invariably made by crossed cheques to the French company or the agent all of which were remitted to the French company, endorsed by the agent where necessary.

It was held that the French company did not exercise a trade in the United Kingdom, and that the agent was not in receipt of any profits within the meaning of § 41, Income Tax Act, 1842 (now General Rules 4, 5 and 13, Income Tax Act, 1918).

Macpherson & Co. v. Moore (1912), 6 Tax Cas 107

A Belgian firm employed a firm in Glasgow as agents for the sale of their goods in the United Kingdom. Orders were sent to the Belgian firm for approval, subject to which contracts were made by the Glasgow agents on behalf of the firm, and the goods were sent to the agents for delivery to the customer, to whom they were invoiced by the agents.

The agents received payment and rendered accounts periodically to the Belgian firm.

It was held that the Belgian firm exercised a trade within the United Kingdom and that the Glasgow firm were rightly assessed as agents.

Smidth v. Greenwood (1922), A.C. 417

A Danish firm manufacturing cement-making machinery rented an office in London. The London representative ascertained the requirements of purchasers in the United Kingdom and superintended the installations here. The contracts were made in Copenhagen. Goods despatched f.o.b. at Copenhagen.

Held that as far as the trade was carried on in this manner there was no liability to Income Tax, and that the General Rule 6 of the Income Tax Act, 1918, did not extend the *charge* to Income Tax, but merely revised the machinery for assessing and collecting the duty.

Wilcock v. Pinto (1925), 94 L.J.K.B. 101

Cotton merchants in Egypt had an agent in Manchester. The agent.—

- (1) Sold specified quantities at fixed prices.
- (2) Obtained general offers and transmitted such offers to Egypt for acceptance or rejection.

Held that the Egyptian firm was exercising a trade in Great Britain and was assessable in the name of the Manchester agent.

Maclaine & Co. v. Eccott (1926), 95 L.J.K.B. 616.

Merchants in Java had an agent in London. The Java merchants sold goods to a non-resident purchaser, the contracts being made in London through the London agents, payment being

made to a London bank for the account of the Java merchants. The goods were consigned direct to the non-resident purchaser and delivered abroad.

Held that the London agent was not assessable to Income Tax on the profits of such transactions, as profits of a trade exercised within the United Kingdom by the non-resident.

Belfour v. Mace (1928), 15 T.C. 539.

A firm in Italy appointed B. as their sole agent for the United Kingdom, Canada and Australia for the sale of the majority of their productions. B. solicited orders and transmitted them to Italy, the firm reserving the right to accept or refuse them and to fix prices. Acceptances were sent in duplicate to B., who posted one copy to the customer. The goods were forwarded direct to the customer, save for small parcels which were sometimes sent in bulk to B. to distribute. No stock or office was maintained here by the firm. No bankers' account was kept in the United Kingdom, payments being made direct to Italy or to the agent for transmission.

The agent was remunerated by a commission on sales, and paid his own expenses. He represented some other manufacturers but the bulk of his business was for the Italian firm.

Held that the Italian firm were exercising a trade within the United Kingdom, and were properly assessed in the name of the agent, who must be regarded as an authorised person carrying on their regular agency.

W. H. Muller & Co. (London) Ltd v Lethem (1927), 13 T.C. 126

A British company was appointed London agent for the "Botavier Line" (London and Rotterdam) by the Dutch firm who were the managers and agents of the two Dutch ship-owning companies whose vessels constituted that line. The service was advertised from the company's offices and the vessels sailed from its wharves in London. The company did everything required to be done in London as regards both passenger and goods traffic, sold tickets to passengers travelling to Rotterdam, and arranged for the landing of passengers from Rotterdam. It accepted goods for shipment from London to Rotterdam and collected the freight if shipped c.i.f.; and delivered all goods arriving in London, collecting the freight where the goods were shipped f.o.b. in Rotterdam.

The company had no direct communication with the Dutch companies, but received its instructions and remuneration, including

commission on all fares and freights, both inward and outward, from the Dutch firm, to whom it accounted for such fares and freights as it collected

It was held that the two Dutch ship-owning companies were carrying on trade in the United Kingdom through the British company as their agents, and were assessable to Income Tax in the name of that company in respect of the profits derived from all contracts made in the United Kingdom for the carriage of goods and passengers, whether to or from the Continent, but excluding profits arising from contracts for the carriage of goods made with a non-resident where the agent was not in receipt of the freight.

Whether a trade is exercised in this country turns upon the question whether contracts in the course of trade are made in this country (*Rowson v. Stephen and v. Commissioners of Inland Revenue* (1929), 14 T.C. 543).

(j) Method of Assessment of Non-Residents.

The Authorities are entitled to have the proper profits resulting from carrying on business in the United Kingdom ascertained according to the rules and regulations of Income Tax, and for this purpose can demand accounts in the ordinary manner, in order to ensure that goods sent to this country for sale shall not be invoiced to this country at such price that all the profit thereon is made in the foreign country, no profit being made in this country.

Non-resident persons are chargeable to Income Tax in the name of any trustee, guardian, tutor, curator or committee, or of any factor, agent, receiver, branch or manager; although the factor, agent, receiver, branch or manager may not have the receipt of the profits or gains of the non-resident (Rule 5, General Rules applicable to all Schedules).

It is also provided that a non-resident person may be charged in respect of any profits or gains arising, whether directly or indirectly, through or from any branch, factorship, agency, receivership or management, and shall be so chargeable in the name of the branch, factor, agent, receiver or manager (Rule 6, General Rules applicable to all Schedules).

Where such non-resident is chargeable in respect of profits arising from goods or produce manufactured or produced by him out of the United Kingdom, but sold within the United Kingdom, the person in whose name the non-resident person is so chargeable may, if he thinks fit, apply to the Commissioners by whom the assessment is made or, in case of an appeal, to the General or Special Commissioners to have the assessment to Income Tax, in respect of those profits or gains, made or amended on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold who had bought from the manufacturer or producer direct, and, on proof to the satisfaction of the Commissioners concerned of the amount of the profits on the basis aforesaid, the assessment shall be made or amended accordingly (Rule 12, General Rules applicable to all Schedules).

Illustration.

The profits of a non-resident manufacturer on sales of his goods through an agent in the United Kingdom amounted to £6,000. It was shown to the satisfaction of the Commissioners that if the agent were a merchant purchasing the goods from the manufacturer for resale, his profits thereon would have been £3,200 only. The assessment will be amended to that figure, thus eliminating the manufacturing profit included in the £6,000.

It is also provided that where a non-resident person, not being a British subject or a British, Indian, Dominion, or Colonial firm or company, or branch thereof, carries on business with a resident person, and it appears to the Commissioners by whom the assessment is made that, owing to the close connection between the resident and the non-resident person, and to the substantial control exercised by the non-resident over the resident, the course of business between those persons can be so arranged, and is so arranged, that the business done by the resident, in pursuance of his connection with the non-resident, produces to the resident either no profits, or less than the ordinary profits which might be expected to arise from the business, the non-resident person shall be chargeable to Income Tax in the name of the resident person as if the resident person were an agent of the non-resident person (Rule 7, General Rules applicable to all Schedules).

It is further provided that where it appears to the Commissioners by whom the assessment is made, or on any objection or appeal, to the General or Special Commissioners, that the true amount of the profits or gains of any non-resident person chargeable in the name of a resident person with Income Tax cannot in any case be readily ascertained, the Commissioners may, if they think fit, assess the non-resident person on a percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he is chargeable; and in such case § 101 shall extend so as to require returns to be given of the business so done by the non-resident person through or with the resident person, in the same manner as returns are to be given under that section of the profits or gains to be charged.

The amount of percentage shall in each case be determined, having regard to the nature of the business, by the Commissioners by whom the assessment on the percentage basis is made, subject, in the case of an assessment made by the Additional Commissioners, to objection or appeal to the General or Special Commissioners.

If either the resident or non-resident person is dissatisfied with the percentage determined, either in the first instance or on objection or appeal by the General or Special Commissioners, he may, within four months of that determination, require the Commissioners to refer the question of the percentage to a Referee or Board of Referees to be appointed for the purpose by the Treasury, and the decision of the Referee or Board shall be final and conclusive (Rule 9, General Rules applicable to all Schedules).

By Rule 10, General Rules applicable to all Schedules, a non-resident person cannot be rendered chargeable in the name of a broker or general commission agent, or in the name of an agent, not being an authorised person carrying on the non-resident's regular agency, or a person chargeable as if he were an agent in pursuance of this rule, in respect of profits or gains arising from sales or transactions carried out through such a broker or agent.

This rule is extended to provide that a non-resident shall not be chargeable in the name of a broker even though the broker acts regularly for the non-resident, provided the broker is carrying on *bonâ fide* the business of a broker, and that he receives remuneration at a rate not less than the customary rate in the class of business concerned. The term "broker" includes general commission agent (§ 17—1925).

The non-resident person is not by virtue of the above section relieved of liability to tax^s on the profits made in this country, but the tax cannot be assessed upon the broker acting for him. If, however, the non-resident principal can be reached by any other means, he will be assessed in respect of the profits arising from sales conducted by brokers on his behalf.

The fact that a non-resident person executes sales or carries out transactions with other non-residents in circumstances which would make him chargeable in pursuance of this section in the name of a resident person, shall not of itself make him chargeable in respect of profits arising from those sales or transactions (Rule 11, General Rules applicable to all Schedules).

(k) Foreign Companies earning profits partly in and partly outside the United Kingdom.

Where a foreign company earns part of its profits in the United Kingdom it will be assessed upon that part in the ordinary way (*Ericksen v. Last* (1881), 45 L.T. 703). Dividends payable in the United Kingdom, however, must be regarded as payable rateably out of all the profits distributed, whether earned in the United Kingdom or elsewhere; hence a further sum must be charged for Income Tax upon the foreign profits distributed in England, and this must be deducted *pro rata* from the English dividend warrants. As the English branch pays tax on the English profits, and the tax deducted from the English dividends is not recouped by the company, but goes direct to the Crown, the deduction from dividends must only be in respect of the foreign profits included in such dividends or a double assessment would result (*Gilbertson v. Ferguson* (1881), 7 Q.B.D. 562).

Illustration.

A Foreign Company has a branch in England upon which income tax is assessed in the ordinary way. The Foreign Company, for the year ending 31st December, 1933, distributes a total dividend of £250,000, of which £100,000 is payable in England. For the year 1932-33, the English assessable profits are £50,000

The dividend must be regarded as paid to the extent of $\frac{50,000}{250,000}$ of each £ out of English profits, the balance out of foreign profits. Hence the dividend payable in England is considered to be paid to the extent of $\frac{50,000}{250,000}$ of £100,000 = £20,000 out of English profits, and the balance, £80,000, out of foreign profits *which have not been charged to British tax.*

Alternatively, the amounts may be expressed —

If A = the Total Dividend,
 B = the English Dividend.
 C = the English Profit.
 X = the Proportion of the English Dividend already
 subjected to Taxation.

and $B \cdot X$ = the Proportion of the English Dividend taxable
 in respect of the Foreign Profit

$$A \cdot \frac{C}{A} = C \cdot X$$

$$\therefore 250,000 \cdot \frac{100,000}{250,000} = 50,000 \cdot X$$

$$\therefore X = \frac{50,000}{250,000} = \frac{1}{5}$$

$$\frac{250,000}{5}$$

If, therefore, £25,000 represents the proportion of the dividend paid in England which has already been subjected to tax, £75,000 represents the untaxed proportion

Income Tax will therefore be deducted from the
 English Dividend £100,000 at $\frac{1}{5}$ = in the £ **£25,000**

Income Tax has already been paid in respect of these
 dividends to the extent of £20,000 at $\frac{1}{5}$ = in
 the £ **£5,000**

Leaving a further sum to be handed over to the
 Revenue amounting to .. **£20,000**

CHAPTER VI.

Business Profit and Loss Accounts.

§ 1 THE PREPARATION OF ACCOUNTS

2 ---AUCTIONEERS

3 ---BANKS

4 ---BREWERIES

5 ---BUILDERS

6 ---DOCTORS

7 ---HOTELS

8 ---SAVINGS BANKS

9 ---PRIVATE SCHOOLS

10 ---SOLICITORS

11 ---STOCKJOBBER'S

12 ---LLOYD'S UNDERWRITING SYNDICATES

13 ---LLOYD'S UNDERWRITING AGENTS

CHAPTER VI.

BUSINESS PROFIT AND LOSS ACCOUNTS.**§ 1.—The Preparation of Accounts.**

The method of adjusting the accounts of businesses in accordance with the rules and regulations of Income Tax has already been shown, and various items which are respectively allowed and disallowed have been stated, in connection with the accounts of sole traders, partnerships, and limited companies generally.

Some special cases, however, have particular features which it is thought advisable to illustrate separately in this chapter.

The professional accountant, in preparing accounts for Income Tax purposes, from books which he has not himself audited, must be careful to scrutinize the actual accounts in the books, in order that he may judge whether the amounts included in the balances on the various accounts are precisely described by the accounts themselves. For instance, it may happen that a firm will charge Income Tax to the Office Expenses Account, in which case an adjustment of this particular account would have to be made for Income Tax purposes.

§ 2.—Auctioneers.

The following is an illustration of Income Tax adjustments in respect of an auctioneer's business :—

Illustration.

The following is the Profit and Loss Account of Messrs Long & Chapman, auctioneers and estate agents, for the year ended 31st December, 1931 :—

BUSINESS PROFIT AND LOSS ACCOUNTS. 249

Dr. PROFIT AND LOSS ACCOUNT, YEAR ENDED 31ST DECEMBER, 1931. Cr.

		£	s	d	£	s	d
To Rates							
„ Ground Rent	60						
„ Salaries	750						
„ Outside Assistance	140						
„ Boards Signwriting	75						
„ Office Expenses	110						
„ Advertising	183						
„ Depreciation of Lease	32 1/2						
„ Improvements to Premises	14						
„ Interest on Capital	14 1/2						
„ Net Profit	1,568						
		44	0	0			
					4,500	0	0
					500	0	0
					50	0	0

The premises are held on lease, the Schedule A value being £240. The net charge for Schedule A tax is included in the item Office Expenses, and Schedule D tax is charged to the Partners' Accounts.

Find the assessment for the year 1932-33

PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX
Dr. YEAR ENDED 31ST DECEMBER, 1931 Cr.

To Schedule A Value of Premises	240	By N Profit and Rent	1,568
„ Balance Assessable Profit	1,986	„ Depreciation of Lease	32 1/2
		„ Payments to Premises	84
		„ Interest on Capital	14 1/2
		„ Income Tax Schedule A	44
			£2,226
		Amount 1932-33	£1,086

NOTE.—The Schedule A tax is ascertained on the basis of tax actually paid as follows —

1930-31 Assessment—	1/6th of £240 at	£
4/6 in the £	.. .. .	£13 10 0
1931-32 Assessment, 1/6th of £240 at		
5/- in the £	.. .. .	45 0 0

Less 5/- in the £ recouped on Ground Rent of £60
Net tax charged in accounts £13 10 0

§ 3.—Banks.

Any bank carrying on a *bond fide* banking business in the United Kingdom is to be relieved from Income Tax under Schedule C on interest in respect of all subscriptions to war loans issued for the purposes of the Great War (Rule 3, General Rules, Sch. C), and in place thereof the interest on such loans is to be assessed under Case I, Schedule D (Rule 14, Cases I and II, Sch. D).

This method enables a bank to charge its expenses against such interest in cases where there would otherwise have been an adjusted loss.

It may be mentioned that the Commissioners interpret this section somewhat strictly, and the mere registration of a person or a company as a banker will not in itself be sufficient to obtain the benefit of the clause.

The following is a representative example of the adjustments involved in a bank computation.

PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX

Cr

Net Annual Value of Bank Premises	41,000	0	0	By Net Profit per P and L Account	450,000	0	0
Loss on Sale of Investments carried to Reserve	3,000	0	0	Transfers to Reserve	100,000	0	0
Income Taxed at Source	218,000	0	0	Profits on Sale of Investments carried to Reserve	15,000	0	0
Adjusted Profit	444,000	0	0	Depreciation on Investments	1,400	0	0
				Income Tax, etc., Depreciation and other disallowable charges	130,000	0	0
	£ 706,000	0	0		£ 706,000	0	0

It should be noted that dealing in investments is considered as part of a bank's trading transactions.

§ 4.—Breweries.

For some years there was considerable difficulty with regard to the adjustment for Income Tax purposes of expenditure by brewers in connection with tied houses.

[A tied house is one held by the brewers as freeholders or leaseholders which is let to tenants on the understanding that they shall sell only the particular beers manufactured by the brewers concerned.]

Towards the close of the nineteenth century a great deal of activity prevailed amongst brewers to secure licensed premises, with a view to tying them to their own businesses, and in many cases very large prices were given for premises, with this object in view. In consequence of the heavy prices paid and the heavy licence duties imposed, the trade suffered very considerably, to such an extent that the brewers themselves have had to bear a great deal of expense in connection with the tied houses which in more prosperous times was borne by the tenants.]

These expenses, though borne by the brewers, were not allowed for Income Tax purposes; but considerable relief was afforded in connection with this expenditure by the decisions in *Smith v. Lion Brewery* ((1911), 27 T.L.R. 261); and *Usher's Wiltshire Brewery v. Bruce* ((1914), 31 T.L.R. 104).

The following are allowed thereby as deductions for Income Tax purposes :—

Tied House Expenditure.

- (a) Repairs executed for the purpose of trade.
- (b) The excess of the gross Schedule A assessments over the rents received from tied houses. If leasehold the lease rent paid should be disallowed.
- (c) Fire and Licence Insurance Premiums, and legal and other expenses in connection with tied houses (*Usher's Wiltshire Brewery v. Bruce* (1914), 31 T.L.R. 104).

It was held in *Collyer v. Hoare & Co.* (1932), 17 T.C. 169) that in determining the amounts to be allowed as deductions in respect of deficiencies of rent each tied house must be considered separately, and that in computing the deduction for a particular tied house, account must be taken of any premium received as well as of rent.

Compensation Levy.

Compensation levy payable under the Licensing Act, 1904, is also allowed, on the ground that the payment is essential to the earning of profits, and not a deduction from the profits after they are made (*Smith v. Lion Brewery Co.* (1911), 27 T.L.R. 261).

The following are not allowed as deductions for Income Tax purposes : -

(1) Premium paid on lease of tied house (*Watney v. Musgrave* (1880), 42 L.T. 690).

(2) Damages and costs recovered by a guest injured by the fall of a chimney while sleeping in an hotel, on the ground that such loss was not connected with or did not arise out of the trade (*Strong & Co., Ltd. v. Woodfield* (1906), A.C. 448).

(3) Cost of application for new licences (*Southwell v. Savill Bros.* (1901), 2 K.B. 394).

Illustration.

The following is the Trading and Profit and Loss Account of a Brewery Company for the year ended 31st December, 1932.

Wear and Tear Allowance for the fiscal year 1933-34 is admitted at £1,600.

The gross values for Schedule A of the tied houses amount to £21,210, and the actual rents received therefrom amount to £20,000. Included in these rents were amounts totalling £3,500 in respect of certain tied houses assessed for Schedule A at a gross value of £3,200. No premiums had been received.

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The net Schedule A value of the Brewery is £2,400.
Show the Income Tax Assessment for the year 1933-34.

To TRADING AND PROFIT AND LOSS ACCOUNT, YEAR ENDED 31ST DEC., 1932. Cr.

To Stock	£ 9,980	By Beer Sales	£ 99,104
Purchases	23,000	Yeast and Grains	900
Beer Duty	16,000	Stock	10,000
Beer Purchased	7,000		
Coal	1,000		
Wages	3,700		
Gross Profit	49,124		
	<u>£110,004</u>		<u>£110,004</u>

To Stock	£ 430	By Gross Profit	£ 49,324
Rates, Electric Light &c	900	Commissions	1,800
House Keep and Motor Expenses	1,500	Rents Receivable on Licensed Properties	£20,000
Tenants' Rates	250	Less Rents Payable	10,000
Tenants' Licences	500	Interest on Loans to Tenants (less Tax)	9,500
Company's proportion of Extra Licence Duty	6,000	Transfer Fees	1,715
Loans to Tenants irrecoverable	1,000		<u>10</u>
Bad Debts	800		
Licences (Brewery and Stores)	100		
Charitable Donations	250		
Fire Insurance, Brewery and Premises	100		
Law Costs, Tenants' Agreements &c	260		
Salaries	1,400		
Discounts	600		
Advertising	500		
Loss on Managed Houses	200		
Repairs to Licensed Premises	1,850		
Compensation Levy	2,000		
Repairs to Brewery and Plant	1,500		
Directors, Trustees and Auditors	3,000		
Interest on Debentures and Loans	15,000		
Depreciation of Plant	1,000		
Leases	2,500		
Casks, Drays &c	1,000		
Income Tax—Schedule D	1,500		
Schedule A on Brewery & Stores	600		
Bank Interest	120		
Net Profit	17,219		
	<u>£62,409</u>		<u>£62,409</u>

To ADJUSTED PROFIT AND LOSS ACCOUNT Cr.

To Rents Receivable on Licensed Properties (less Rents Payable)	£ 9,000	By Net Profit	£ 17,219
Interest on Loans to Tenants	1,715	Interest on Debentures and Loans	15,000
Schedule A on Brewery (Gross)†	2,884	Depreciation of Plant	1,000
Assessable Profit	24,729	Leases	2,500
		Casks, Drays, &c.	1,000
		Income Tax Schedule D	1,500
		Schedule A	600
	<u>£19,819</u>		<u>£19,819</u>

Assessable Profit	£ 24,720
Less Wear and Tear	1,000
	<u>23,720</u>

Less Excess of Gross Schedule A Value of Field Houses where this exceeds the rent receivable, over the rent receivable therefrom (£21,210 less £20,000 3,500)	1,510
Assessment 1933-34	<u>£21,610</u>

Notes.

(1) TENANTS' RATES AND TENANTS' LICENCES.

These are now allowed as a charge (*Usher's Wiltshire Brewery Co., Ltd v Bruce* (1914), 31 T.L.R. 104).

(2) COMPANY'S PROPORTION OF EXTRA LICENCE DUTY.

It is assumed that this charge has been placed upon the company by the Commissioners in accordance with § 46 of the Finance (1909-10) Act, 1910, and will therefore be allowed as a charge.

(3) ADVANCES TO TENANTS IRRECOVERABLE.

This item is allowed if the loan was originally represented by money advanced (*Reid's Brewery Co. v Male* (1891), 2 Q B 1), but if, as in the majority of transactions of this nature, cash does not pass, the item will not be allowed. It is assumed here it was an actual cash transaction.

(4) CHARITABLE DONATIONS

These are assumed to be allowed as annual contributions to charities from which the employees' and their dependents' may derive benefit.

(5) LAW COSTS, TENANTS' AGREEMENTS, ETC

These are allowed as a charge for Income Tax purposes (*Usher's Wiltshire Brewery Co., Ltd v. Bruce, supra*)

(6) REPAIRS TO LICENSED PREMISES.

The cost of repairing tied houses for which the tenant does not pay represents an expense commercially necessary as part of the cost of earning the brewers' profits, and this item is therefore allowed (*Usher's Wiltshire Brewery Co., Ltd v Bruce, supra*)

(7) COMPENSATION LEVY.

This item is allowed as a charge for Income Tax purposes (*Smith v Lion Brewery* (1911), 27 T.L.R. 261).

(8) INTEREST ON DEBENTURES AND LOANS.

This item must be added back as tax is deducted before payment.

(9) DEPRECIATION.

Depreciation is not allowed, but an allowance for wear and tear of plant, machinery, etc., can be claimed.

(10) INCOME TAX.

All Income Tax charged has to be written back.

(11) RENTS RECEIVABLE LESS RENTS PAYABLE.

This item represents the difference between rents received on freehold and leasehold licensed properties and rents paid in respect of them. Both these items being taxed under Schedule A, the difference between the two can be written back for Income Tax purposes.

(12) INTEREST ON LOANS TO TENANTS

This item is taxed at the source, and can therefore be written back.

(13) LOSS ON RENTS

The brewer is allowed in respect of tied houses to deduct from his assessment the excess of the gross Schedule A values of tied houses over the net rents received from them where there is such an excess. If the rent receivable exceeds the gross Schedule A value, the excess is not taxable (*Collyer v. Houe & Co.* (1932), 17 T.C. 109). In this way he reduces the trading profit by the amount of the loss sustained in respect of rents of properties tied to his trade and therefore let at what is frequently a nominal or, at any rate, an uneconomic rent (*Usher's Wiltshire Brewery Co. v. Bruce, supra*), but escapes on any profit rentals (*Collyer v. Houe & Co., supra*).

(14) GROSS SCHEDULE A

This is computed by adding to the net annual value one-fourth of the first £80 plus one-fifth of the remainder.

§ 5.—Builders.

The adjustment of accounts in the case of builders follows the usual rules, but the following points must be noted :—

- (1) Work in progress must be valued according to sound accountancy principles, and the same basis be adopted from year to year.
- ✓ No portion of anticipated profit need be included.

- (2) Engines, cranes, etc., are machinery and plant on which a Wear and Tear Allowance can be claimed, but ladders, scaffolding, ropes, etc., are dealt with on a renewals basis;
- (3) Where the houses are let or sold leasehold, chief rents are created, and their capitalised value must be brought into account. The capitalised value should represent the saleable value of the rents at the date of capitalisation.
- (4) Speculative Builders frequently accept a second mortgage, or guarantee a Building Society against loss, in respect of part of the sale price; the following is the text of the arrangement agreed between the Inland Revenue and the building industry for postponing payment of tax in such circumstances :-

1. The following arrangement may be applied where on sale of a house, a builder either accepts a second mortgage in respect of part of the sale price, or guarantees a Building Society against loss up to a specified part of the amount advanced and leaves a part of the sale price on deposit with the Society

It shall apply to assessments for the year 1933-34 and subsequent years, but shall not prejudice the right of the Crown to recovery of the full tax payable in respect of any assessment at any time after it falls due for payment under the provisions of the Income Tax Acts

2 The tax charged in an assessment shall be payable as follows :-

- (1) as to the tax chargeable on the full amount of the assessment less 60 per cent of the "deposits" and second mortgages taken into account in arriving at the amount of the assessment, on 1st January in the year of assessment (or, where tax is payable in two instalments, on 1st January and 1st July);

- (2) as to the tax chargeable on 60 per cent. of the said "deposits" and second mortgages, by a payment of one-fourth part thereof on 1st January of each of the succeeding four years.

3. Where (a) a Building Society releases a "deposit" or (b) a second mortgage is paid off, the whole or balance of the tax chargeable in respect thereof shall become payable on or before the following 1st January. On 1st December of each year, a statement shall be furnished by the builder giving particulars of all such releases and payments made up to that date, of which particulars have not already been furnished.

4. Except as provided in paragraph 5, a loss under a guarantee or on second mortgage is to be allowed as a deduction in computing the profits (or losses) of the accounting period in which the loss is realised.

5. The tax charged in respect of a business which has been discontinued (or which, for the purposes of Section 32 of the Finance Act, 1926, is deemed to be discontinued) shall, notwithstanding the discontinuance, be payable as provided in paragraphs 2 and 3. Where, after the discontinuance, but before the last instalment of tax becomes due and payable under this arrangement, a loss is incurred under a guarantee or on second mortgage, the assessment for the year of discontinuance shall be reduced by the amount of such loss and the tax payable during the remainder of the period of deferment shall be reduced accordingly or repayment of the tax overpaid on the assessment shall be made, as the case may require.

6. Sur-tax in respect of any year to which this arrangement applies shall be payable subject to deferment similar to those applicable to income-tax for that year.

7. In the event of failure to pay any tax due under this arrangement within twenty-one days after the agreed date for payment, the full amount of all tax outstanding shall immediately become payable.

I (We) desire to adopt the above arrangement and hereby undertake to abide by the terms thereof

... .. *Signature.*

..... *Dated.*..... *Address.*

§ 6.—Doctors.

Medical men's accounts present little difficulty except in the following respects:—

- (a) They are often kept on a "cash basis," i.e., although all expenditure is charged on an accruals basis, only those fees actually received in cash are brought into credit. "When a trader or follower of a profession or vocation dies or goes out of business.....and there remain to be collected sums owing for goods supplied during the existence of the business or for services rendered by the professional man during the course of his life or his business, there is no question of assessing those receipts to Income Tax; they are the receipts of the business while it lasted, they are the arrears of that business; they represent money which is earned during the life of the business, and are taken to be covered by the assessment made during the life of the business, whether that assessment was made on the basis of bookings or on the basis of receipts" (Rowlatt, J. in *Bennett v. Ogston* (1930), 15 T.C. 374). In the case of new practices, the Inland Revenue will not now countenance the adoption of the cash basis, but insist on the preparation of proper Income and Expenditure Accounts. It is, however, a matter for the Commissioners to decide whether a cash account is acceptable.
- (b) A proportion of the net annual value of, or the rent paid for, the doctor's residence, is properly chargeable. This proportion should be fixed having regard to the fact that a medical man

must maintain a much larger house than would be necessary for his personal use, in order to attract patients. Although he may only use two rooms for his practice, he should be allowed a proportion higher than the mere value of such rooms. A proportion of the cost of lighting, heating, cleaning, and of servants' wages should also be allowed.

- (c) The major portion of the cost of running his motor car is chargeable to the practice. An account of all expenses should be kept and charged, a reasonable portion being added back for private use. The wear and tear and obsolescence allowances must be apportioned on a similar basis. If a new car is purchased every year, the renewals basis is more satisfactory.
- (d) The salary of a *locum tenens* employed during a vacation or illness will usually be allowed as a deduction.

§ 7.—Hotels.

The special items to be noted in the case of hotels are as follows :-

- (a) The cost of meals and maintenance of the staff and proprietor is usually credited to the Trading Account and debited as a specific charge either in that account or in the Profit and Loss Account. The proportion attributable to the proprietor is not an allowable item, being an appropriation of profit, and must be added back for Income Tax purposes.
- (b) A proportion of the rent or net annual value, whichever is chargeable, must be added back, in

the case of a resident proprietor in respect of the portion of the hotel occupied by him and his family.

(c) Any charge made in the accounts in respect of hire purchase instalments on furniture, etc., must be apportioned between interest charges, which are allowed, and part hire instalments, which must be added back.

(d) A Wear and Tear Allowance should be claimed on furniture, etc., except in the case of those items which are subject to constant renewal through breakages, etc., on which the renewals basis should be adopted.

Illustration.

TRADING AND PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31ST DECEMBER, 1932

Dr				Cr
	£	£		£
To Meat, Fish and Poultry	2,530		By Rooms	6,000
„ Provisions	1,200		„ Meals	10 250
„ General Stores	1,800		„ „ „ „ „	2 450
		3,530	„ Attendance	1 090
„ Wages and Meals of Staff and Proprietor (and his family)	£1 600		„ Laundry	70
„ Rent	800		„ Fuel and Sundries	190
„ Rates and Insurance	610			
„ Income Tax	700			
„ Fuel, Gas and Electric Light	1,020			
„ Laundry	150			
„ Licence and Telephone	130			
„ Printing and Stationery	60			
„ Newspapers and Periodicals	39			
„ Uniforms	81			
„ Advertising	200			
„ General Expenses	730			
		6,510		
„ Proprietors' Salary		600		
„ Repairs, Maintenance and Depreciation				
„ Lease	£720			
„ Premises	60			
„ Furniture, etc.	300			
„ Glass and China	180			
„ Cutlery and Plate	90			
„ Linen	120			
		1,470		
„ Gross Profit		5 940		
	£20 050			£20,050
	£			£
To Bad Debts	10	By Gross Profits from General Account		5,940
„ Legal Costs	20	„ Wines and Spirits		2 510
„ Audit Fee	188	„ Tobacco		95
„ Hire Purchase Interest	830	„ Billiards		85
„ Net Profit	7,602			
	£8,630			£8,630

BUSINESS PROFIT AND LOSS ACCOUNTS. 261

The Net Annual Value of the premises is £1,000. It is agreed that one-fortieth of the premises are occupied by the proprietor and his family, and that £900 be regarded as the cost of maintenance (inclusive of all charges for meals, lighting, laundry, etc.) of the family. The glass and china, cutlery and plate, and linen are dealt with on the renewals basis, and a wear and tear allowance of £280 has been agreed for 1933-34 in respect of furniture, etc. The legal costs are on Revenue Account.

PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX Cr

To Net Annual Value		By Net Profit	7,602
" Less Proportion disallowed		" Rent	800
" of Proprietor		" Income Tax	700
	97 1	" Proprietor's Salary	600
Adjusted Profits ..	10 70 1	" Depreciation re	
		" Tools	720
		" Premises	60
		" Furniture, etc.	300
		" Proprietor's Maintenance	900
	<u>£11,682</u>		<u>£11,682</u>
		Assessment 1933-34	
		Profit 1932	£10,707
		Less Wear and Tear Allowance	280

§ 8.—Savings Banks.

The income of savings banks which would be chargeable under Schedules C or D is exempt from tax in the year for which exemption is claimed so far as the income is applied in the payment or credit of interest to any depositor. (The interest is chargeable on the depositor under Case III, Schedule D.)

In any case, however, where the interest paid or credited to any depositor exceeds £15 the bank or branch concerned must make a return to the Inspector of Taxes for the district in which it is situated of the names and addresses of such depositors, otherwise it will not obtain the relief to which it is entitled by this section.

Any such return must be made before the 1st of May in the year following that in respect of which exemption is claimed (§ 39 (3), § 32—1920 ; § 24—1924).

A savings bank may claim repayment of tax in respect of management expenses (§ 33—*see* Chap. IX. § 9).

§ 9.—Private Schools.

It is generally the case with regard to private schools that the schoolmaster himself occupies a portion of the school premises.

If this is so, then under Rule 3 (c), Cases I and II, Schedule D, as amended by § 31 (1921), not more than two-thirds of the rent or net Schedule A assessment can be charged against the profits, unless in any particular case the Commissioners are of opinion that, having regard to all the circumstances, some greater sum ought to be deducted. If the schoolmaster does not live on the premises the full rent or net Schedule A assessment can be charged.

In the same way if the schoolmaster lives on the premises it is necessary to apportion the various classes of expenditure, as only the part applicable to and necessary for the business can be allowed as a charge, and the usual procedure is to treat this proportion as two-thirds of the whole, except in the case of a large school, when a greater proportion may be allowed.

By concession, Wear and Tear Allowance may be claimed on school furniture and fixtures.

The following is an illustration of the accounts of a schoolmaster :—

Illustration.

Mr H Harvey is a schoolmaster. He balances his books regularly on the 31st December in each year.

He owns the freehold of the school premises, and the Commissioners have decided that two-thirds of the Schedule A Assessment (£240) can be regarded as applicable to the business, the remaining one-third being regarded as applicable to that portion of the premises used as a private residence.

In dealing with the accounts for the year ended 31st December, 1932, the Inspector treated the following amounts as personal expenditure unconnected with the business.—

Provisions	£224
Indoor Wages	40
Garden and Outdoor Wages	30
Laundry	52
Fuel and Light	20
Fire Insurance	3
Medical Expenses	6
Repairs and Renewals	10
Rates	10

The following is the Profit and Loss Account for the year ended 31st December, 1932

PROFIT AND LOSS ACCOUNT, YEAR ENDED 31ST DECEMBER, 1932					
Dr			Cr.		
Particulars	Amount		Particulars	Amount	
	£	s d		£	s d
To Provisions	1,236	0 0	By School Fees	5,914	7 0
„ Masters' Salaries	610	0 0			
„ Indoor Wages	35	0 0			
„ Garden and Outdoor Wages	200	0 0			
„ Laundry	240	0 0			
„ Fuel and Light	162	0 0			
„ Postage, Stationery	110	0 0			
„ Games, Expeditions, &c	63	0 0			
„ Income Tax, Schedule D	487	2 0			
„ „ „ Schedule A	60	0 0			
„ Fire Insurance	12	0 0			
„ Medical Expenses	46	0 0			
„ Repairs and Renewals	184	0 0			
„ Keep of Animals	62	0 0			
„ Rates	32	0 0			
„ Sundry Expenses	140	0 0			
„ Net Profit	1,825	5 0			
	£5,914	7 0		£5,914	7 0

You are required to adjust the account in accordance with the views of the Inspector and acquaint Mr. Harvey as to the amount of the assessable profits for the year 1933-34., ignoring Wear and Tear.

PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX,			
Dr			Cr
	£		£
To Schedule A—		By Net Profit	1,825
" of £240	100	" Income Tax, Schedule A	60
" Balance, being Assessable Profits	2,637	" " Schedule D	487
		" Proportion of Expenditure	
		treated as personal—	
		Provisions	£224
		Indoor Wages	40
		Garden and Outdoor	
		Wages	30
		Laundry	52
		Fuel and Light	20
		Fire Insurance	3
		Medical Expenses	6
		Repairs and Renewals	40
		Rates	10
			425
	<u>2,797</u>		<u>£2,797</u>
		Assessment, 1933-34	<u>£2,637</u>

§ 10. -- Solicitors.

The following is an illustration of Income Tax adjustments in respect of a solicitor's business : —

Illustration.

The Profit and Loss Account of Mr. R. Scrivener, a solicitor of the Supreme Court, was as follows —

PROFIT AND LOSS ACCOUNT,			
Dr			Cr
			£ s d
To Rent of Office	100	By Costs	1,800 0 0
" Rates	56	" Articled Clerk's Premium	100 0 0
" Office Expenses	245		
" Salaries	510		
" Bad Debts	63		
" Depreciation			
Law Library			
Furniture			
" Interest on Loan	10		
" Bank Interest and Charge	4 1		
" Net Profit	831 1		
	£1,900 0 0		£1,900 0 0

The office expenses include an item of £49 paid for Income Tax under Schedule D.

Mr. Scrivener has also a local office at his private house, which is his own property, and is assessed under Schedule A at £40 net

What is Mr. Scrivener's Assessment for the year 1933-34 ?

PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX,

Dr

YEAR ENDED 31ST DECEMBER, 1932

Cr

To Schedule A, Value Private House	1	By Net Profit	£ 831
say, £40 allowed	13	„ Depreciation	20
„ Part Rates—Cleaning, &c.,		„ Interest on Loan	10
Private House	6	„ Income Tax	49
„ Balance, Assessable Profit	891		
	£910		£910
		Assessment, 1933-34	£801

The cost of renewing office furniture would, of course, be charged under office expenses, since Wear and Tear Allowance is not claimed

§ 11.—Stockjobbers.

The following is an illustration of Income Tax adjustments in respect of a stockjobber's business :

Illustration.

The following is the Profit and Loss Account of Messrs. X. Y. & Co., stockjobbers, for the year ended 31st December, 1932.

What would be the firm's assessment for 1933-34 ?

PROFIT AND LOSS ACCOUNT

Dr

YEAR ENDED 31ST DECEMBER 1932

Cr

To Salaries	£ 3,197	s 18	d 0	By Profit on Dealings*	£ 67,420	17	5
„ Partner's Salary	400	0	0	„ Interest	1,708	14	7
„ Rent	900	14	0	„ Dividend	5,417	2	8
„ Office Expenses	3,721	10	8				
„ Petty Cash	543	12	0				
„ Stamps	835	1	6				
„ Splits	472	1	9				
„ Donations	325	0	0				
„ Interest on Loan	600	0	0				
„ Interest on Capital	4,374	0	0				
„ Bonus Account	914	0	0				
„ Commission	1,120	0	0				
„ Annuities to retired Partners	1,500	0	0				
„ Balance, being Profit	49,301	15	3				
	£68,555	14	8				

Dr PROFIT AND LOSS ADJUSTMENT ACCOUNT FOR INCOME TAX. *Cr*

	£		£
To Dividends received, less Tax	5,417	By Net Profit	49,302
„ Balance being Assessable Profit	51,134	„ Partner's Salary	450
		„ Donations	325
		„ Interest on Loan	600
		„ Interest on Capital	4,374
		„ Annuities	1,500
	<u>£56,551</u>		<u>£56,551</u>
		Assessment, 1933-34	£51,134

§ 12.—Lloyd's Underwriting Syndicates.

The following is an illustration of the method of arriving at the assessable profits of an underwriting syndicate :—

Illustration.

X. is an underwriter and underwriting agent at Lloyd's, who balances his books regularly on the 31st December of each year. He writes for himself and three names, viz., A., B., C.; for himself and A. a double line, and a single line for B. and C. His accounts are kept in syndicate form.

You are required to adjust the syndicate accounts for Income Tax purposes, and allocate the underwriting profits between the members of the syndicate to enable them to fill up correctly their Income Tax Returns for the fiscal year, 1932-33, in so far as the underwriting profits are concerned.

The charges represent a salary to X. which is at the rate of £200 per annum per name. X. also receives as agent a commission of 10 per cent. on the ascertained net profits from each name. He charges against his own account salary and commission in exactly the same manner as he does against the accounts of his names.

The Underwriting Agent X will be liable to assessment in respect of the salary and commission after charging any admissible expenses which have not been debited in the Underwriting Accounts (see paragraph 12).

The following is the Underwriting Account for the syndicate of X. and others for the year 1929, closed in 1931 :—

BUSINESS PROFIT AND LOSS ACCOUNTS.

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X AND OTHERS.

Dr		UNDERWRITING ACCOUNT FOR THE YEAR 1920						Cr							
1920		£		s		d		1920		£		s		d	
Dec 31	To Claims	50,200	0	0	Dec 31	By Premiums	103,000	0	0						
	„ Re-insurances	3,600	0	0		„ Salvages	4,800	0	0						
	„ Charges	800	0	0		„ Re-insurance Recoveries	630	0	0						
	„ Balance	54,694	0	0		„ Interest on Investments	864	0	0						
		109,294	0	0			109,294	0	0						
1930		£		s		d		1930		£		s		d	
Dec 31	To Claims	36,400	0	0	Dec 31	By Balance	54,694	0	0						
	„ Re-insurances	1,200	0	0		„ Salvages	6,000	0	0						
	„ Balance	23,514	0	0		„ Re-insurance Recoveries	420	0	0						
							61,114	0	0						
1931		£		s		d		1931		£		s		d	
Dec 31	To Claims	14,570	0	0	Dec 31	By Balance	23,514	0	0						
	„ Re-insurances	240	0	0		„ Salvages	624	0	0						
	„ Balance	9,610	0	0		„ Re-insurance Recoveries	312	0	0						
		24,420	0	0			24,450	0	0						

Dr		SYNDICATE APPROPRIATION ACCOUNT		Cr	
1931				£	s d
Dec 31	To X Commission— 10% of £9,610	961	0 0	9,640	0 0
	„ Profit	8,679	0 0		
		£9,640	0 0		

X AND OTHERS.

ADJUSTED ACCOUNTS ALLOCATING PROFIT BETWEEN THE MEMBERS OF THE SYNDICATE

	£	s	d	£	s	d
To Net Profit for the year 1920				8,676	0	0
Add Agent's Salary	500	0	0			
Ditto Commission	964	0	0			
				1,764	0	0
Amount divisible proportionately between A, B, and C				<u>£10,440</u>	0	0
X — $\frac{1}{3}$ of £10,440	3,480	0	0			
Less Agent's Salary	200	0	0			
				3,280	0	0
Less Agent's Commission—10% of £3,280	328	0	0			
				2,952	0	0
A—Ditto				2,952	0	0
B — $\frac{1}{3}$ of £10,440	1,740	0	0			
Less Agent's Salary	200	0	0			
				1,540	0	0
Less Agent's Commission—10% of £1,540	154	0	0			
				1,386	0	0
C—Ditto				1,386	0	0
Net Profit as per Accounts correctly allocated				£8,676	0	0

The interest on investments as per accounts was as follows :—

For the year 1929 ..	£ 864
----------------------	----------

This interest on investments is divisible as follows :—

X $\frac{1}{4}$ of £864	£ 216
A $\frac{1}{4}$..	216
B $\frac{1}{4}$..	144
C $\frac{1}{4}$..	144
	<hr/> £864

The syndicate's adjusted profits for Income Tax are as follows :—

Net Profit, 1929 ..	£	s	d
Less Interest on Investments ..	864	0	0
Amount upon which Tax is still payable by members of the Syndicate ..	£7,812	0	0

This amount is divisible between the members as follows :—

X — Profit <i>re</i> Account of year 1929 ..		
Less Share of Interest on Investments ..	-	2 664
A Ditto ..		2 664
B Profit, year 1929 ..	1,386	
Less Share of Interest on Investments ..	- 144	
C Ditto ..		1,242
		<hr/> 1,242
Syndicate's Adjusted Profit correctly allocated ..	£7,812	

The basis of assessment set out above is known as the "conventional basis," and it will be observed that the profits made in respect of risks underwritten in 1929 are assessed for the year 1932-33. This basis of assessment cannot be claimed by members who commenced underwriting after the 5th April, 1922. In such cases profits for the year 1929, closed 1931, form the basis of assessment for the year 1930-31. Thus, in the case of members who are assessed on the legal basis, the assessments are made two years later than in the case of an ordinary trader, since the accounts are not closed until two years after the end of the underwriting year (*e.g.*, 1929 is closed 1931).

§ 13.—Lloyd's Underwriting Agents.

The following is an illustration of the method of arriving at the assessment of an underwriting agent :—

Illustration.

Referring to the last illustration, Mr. X., underwriter and agent, consults you with reference to his own Income Tax return for the fiscal year, 1932-33.

He submits, in addition to the information already given in the previous illustration, the following particulars. On the 1st January, 1930, D. joins the syndicate, his agreement with X. being identical with that of the other names. On January 1st, 1931, A. died, and according to the agreement X. receives a winding-up fee of 150 guineas, payable in half-yearly instalments of 50 guineas, the first to be paid six months after the death.

During the year ending 31st December, 1931, X.'s business expenses connected with his underwriting agency business, were as follows:—

BUSINESS EXPENSES.

Particulars	1931
Rent and Housekeeper	£ 191
Clerks' Salaries	154
Salary of Deputy	100
Lloyd's Subscription	21
Shipping Journals, Lloyd's Registers, &c.	8
Seat at Lloyd's	5
Accountancy Charges	150
Audit Fee (Official Audit)	5
Benevolent Fund, Testimonials, &c.	10

MR. X.

PROFIT AND LOSS ACCOUNTS FOR INCOME TAX

FOR THE YEAR ENDING 31st DECEMBER, 1931

	£	s	d		£	s	d
To Rent and Housekeeper	191	0	0	By Salaries as Underwriting Agent during 1931	800	0	0
„ Salaries	154	0	0	Commission 10 per cent on ascertained Profits for last completed year i.e. 1929 and the end of 1931	964	0	0
„ Salaries of Deputy	100	0	0				
„ Lloyd's Subscription	21	0	0				
„ Shipping Journals &c.	8	0	0				
„ Seat at Lloyd's	5	0	0				
„ Accountancy Charges	150	0	0				
„ Audit Fee (X's Proportion only)	5	0	0				
„ Assessable Profits	1,128	0	0				
	<u>£1,764</u>	<u>0</u>	<u>0</u>		<u>£1,764</u>	<u>0</u>	<u>0</u>

Assessment 1932-33

£1,128 0 0

CHAPTER VII.

Losses.

- 1 SETTING OFF LOSSES IN ONE TRADE AGAINST PROFITS MADE IN ANOTHER. RULE 13.
- 2 CLAIMS UNDER § 34, INCOME TAX ACT, 1918, AND § 33, FINANCE ACT, 1926.
- 3 ANNUAL CHARGES CARRIED FORWARD AS A "LOSS." RULE 21, ALL SCHEDULES RULES, AND § 19, FINANCE ACT, 1928.
- 4 BUSINESS TRANSFERRED TO A LIMITED COMPANY.
- 5 LOSSES NOT INCURRED IN CARRYING ON A BUSINESS. CASE VI.

CHAPTER VII.

LOSSES.

§ 1.--Setting off Losses in one Trade against Profits made in another--Rule 13.

Under Rule 13, Rules applicable to Cases I and II, Schedule D, a person carrying on, either alone or in partnership with others, two or more distinct TRADES chargeable under Cases I or II of Schedule D, is entitled, in arriving at the assessment for any fiscal year, to set off a loss made in one trade in the preceding year against a profit made in another trade in the preceding year.

The "loss" is the loss as adjusted for Income Tax purposes, just as the "profit" is the adjusted profit.

This rule affords very material relief to a person who carries on two or more distinct trades and makes a loss in one, and in many cases may reduce considerably the amount payable by persons who are liable for sur-tax, and may have the effect of relieving altogether a person from the payment of sur-tax. It will be seen that the relief is normally given in the year of assessment immediately following that in which the loss was incurred.

The following illustration shows the practical value of the section to the taxpayer :—

Illustration.

X, a married man, carries on business as a grocer, and his adjusted profits for the year ended 30th July, 1932, as agreed with the Inspector of Taxes, amounted to £1,410.

He also carries on business as a hosier, and sustains a loss in the year ended 31st December, 1932, amounting to £1,290. This figure is also agreed with the Inspector of Taxes.

X's only other source of income is that from investments which bring him in an annual gross income of £230.

He desires to claim allowances and deductions, taking advantage of Rule 13 of Cases I and II, Schedule D.

STATEMENT OF INCOME FROM ALL SOURCES, YEAR 1933-34.

		£ s d			£ s d.		
Business Profit							
Grocer	.. ..	1,410	0	0			
Loss Business Loss							
Hosier	.. ..	1,290	0	0			
					120	0	0
Private Income	. . . .				230	0	0
					<hr/>	<hr/>	<hr/>
Total Statutory Income					350	0	0
<i>Deduct</i>							
Earned Income Allowance							
1/4th of £120		24	0	0			
Personal Allowance	. . . .	150	0	0	174	0	0
					<hr/>	<hr/>	<hr/>
Taxable Income	. . . .				£176	0	0
Chargeable £175 at 2 6 in £	. . . .				£21	17	6
1 at 5 in £	. . . .					5	0
					<hr/>	<hr/>	<hr/>
					£22	2	6

It will thus be seen that X., having already paid by deduction Income Tax amounting to £57 10s. 0d., is entitled to claim repayment of £35 7s. 6d. tax. If he were not entitled to set off the loss sustained in the hosiery business against the profit made in the grocery business, he would be liable to pay

tax amounting to £222 12s. 6d. in addition to the £57 10s. 0d. suffered by deduction, thus :

Assessment--Grocer	£1,410
Hosier	Nil.
Investment Income	230
Total Statutory Income	1,640
<i>Deduct--</i>	
Earned Income Allowance	£282
Personal Allowance	150
	432
Taxable Income	<u>£1,208</u>
Chargeable £175 at 2 6	21 17 6
1 033 at 5	258 5 0
	<u>280 2 6</u>
Less Tax deducted at source £230 at 5,	57 10 0
Tax payable under Case I	<u>£222 12 6</u>

Where one trade is carried on by the husband and another by the wife, a loss in the trade carried on by the one may be set off under Rule 13 against the profit in the trade carried on by the other.

It should be noted that in the case of a partnership, the share of any partner in the firm's profit or loss for the year is the amount which he is entitled to apply under Rule 13 against any other trade carried on by him or against his share in the loss or profit of another firm in which he is a partner.

In the case of a new business, the loss in one trade may form the basis for relief under Rule 13 for three years, since the loss for this purpose must be computed as a profit would be computed. This rarely arises in practice.

**§ 2.—Claims under § 34, Income Tax Act, 1918,
and § 33, Finance Act, 1926.**

Section 34 affords relief to a taxpayer who, in carrying on a trade, profession or vocation, farming, etc., sustains a loss in business during the year of assessment. It does not apply in the case of diminished profits, but only where an *actual loss* can be proved to have been sustained after applying the rules and regulations laid down by the Income Tax Acts.

It enables a person who has sustained a loss in business to RECOVER, IN THE YEAR IN WHICH THE LOSS IS INCURRED, an amount equal to the tax thereon, or a proportion thereof, where Income Tax has already been paid for the year of assessment, either on account of the statutory profits of the business based on the profits of the previous year, or in respect of any other income upon which tax has been paid, either by direct assessment or by deduction.

The section (as amended by § 30 (3) 1923) reads as follows :-

34.- (1) Where any person sustains a loss in any trade, profession, employment or vocation, earned on by him either solely or in partnership, or in the occupation of lands for the purpose of husbandry only, or in the occupation of woodlands in respect of which he has elected to be charged to tax under Schedule D, he may upon giving notice in writing to the surveyor within one year after the year of assessment, apply to the general commissioners or to the special commissioners, for an adjustment of his liability by reference to the loss and to the aggregate amount of his income for that year estimated according to this Act.

(2) The commissioners shall, on proof to their satisfaction of the amount of the loss, and of the payment of tax upon the aggregate amount of income, give a certificate authorising repayment of so much of the sum paid for tax as would represent the tax upon income equal to the amount of loss, and the certificate may extend to give any exemption, abatement, or relief depending upon total income from all sources, authorized by this Act.

LOSSES.

Upon the receipt of the certificate the Commissioners of Inland Revenue shall cause repayment to be made in conformity therewith.

(3) If any person shall be guilty of any fraud or contrivance in making any application under this section, or in obtaining any such adjustment or certificate as aforesaid, he shall forfeit the sum of fifty pounds.

(4) Where repayment has been made to a person for any year under this section he shall not be entitled, in computing the amount of the assessment for any subsequent year, to a deduction of any portion of the amount in respect of which such repayment has been obtained.

Where a claim is made under § 34, and tax recovered, the amount of the loss so used cannot be utilised for the purposes of relief under any other provision of the Income Tax Acts.

By § 33, Finance Act, 1926, where a person sustains a loss during the year ending 5th April, 1927, or in any succeeding year, in respect of which relief has not been wholly given under § 34, or under Rule 13 of Cases I and II (which enables a loss in one business to be set off against a profit in another business carried on by the same owner (*see* Chap. VII, § 1), or any other provision of the Income Tax Acts), he can claim that any LOSS NOT UTILISED MAY BE CARRIED FORWARD and set off against the profits or gains on which he is assessed under Schedule D, Case I or II, in respect of that trade for the SIX FOLLOWING YEARS, but any loss in respect of which relief is given under this section cannot be claimed under any other provision.

As regards the loss sustained by a partner, the term "amount of profits or gains on which he is assessed" means his share of the firm's assessment, which he should include in his return of total income (*see* illustration on p. 287).

Relief under § 33, 1926, is to be given against the first available assessments in the succeeding six years.

Where a loss is sustained —

(a) By a person occupying woodlands who has elected, under Rule 7 of Schedule B, to be assessed under Schedule D, or

(b) By a person occupying lands for husbandry who has elected, under Rule 5 of Schedule B, to be assessed under Schedule D, § 33, 1926, applies as though a trade were being carried on. In the case of woodlands, once an election has been made to be assessed under Schedule D, there is no reversion to Schedule B until there is a change of occupier. In the case of husbandry, however, the Schedule B assessment automatically applies unless a Rule 5 claim is made. Accordingly, if in any year a Rule 5 claim is not made, the sequence of Schedule D assessments is broken, and a loss incurred prior to that year cannot be carried forward.

A loss incurred in any year ended prior to 6th April, 1927 (or if transitional relief was claimed under § 29 (3), 1926, a loss incurred in any year ended prior to 6th April, 1929), cannot be carried forward. (NOTE. § 29 (3), 1926, allowed the three years average to be continued in certain cases until 1928-29. Since this relief is now out of date it is not dealt with in this edition.)

It should be noted that § 33 (1926) gives relief by reducing the next following assessment(s) *on the same business* only, whereas a claim under § 34 must, if made, be used against the *statutory* income for the year of assessment, *i.e.*, where the loss exceeds in amount

the total income upon which tax has been paid, no matter under what Schedule it was assessed, a refund of tax under § 34 can only be claimed on an amount equal to such taxed income, the balance of the loss being carried forward under § 33, 1926.

(Under § 33 it will be noted that only *five* assessments are available for reduction by a loss brought forward since, although the loss can be carried forward for *six* years, the first of such years has a *nil* assessment in any case.)

A curious point arises in connection with claims under § 34 where part of the profit consists of taxed interest, dividends, etc., which definitely form part of the trading profit. The Profit and Loss Account for the year of assessment has to be adjusted in accordance with the rules and regulations of Income Tax before an actual loss can be substantiated, and in order to do this everything which has been charged in the Profit and Loss Account, which is not allowed for Income Tax purposes, has to be written back. On the other hand, the Profit and Loss Account may include on the credit side taxed interest and dividends, but such amounts cannot be deducted so as to convert an otherwise profit into a loss, unless it can be proved that the receipt of taxed dividends and interest is not an essential part of the operation of the business as a whole (*Reed v. Edinburgh Life Assurance Society* (1906), 5 Tax Cas. 221). In determining whether a loss remains when such taxed income is included, charges payable can be deducted, however. This restriction applies particularly to Banking, Investment, and Insurance Companies (see Rule 15, Cases I and II, Schedule D (Chap. IX, § 9)).

If, however, the result of trading is a loss prior to writing back such taxed interest and dividends as form part of the trading receipts, then the Commissioners will not grant a refund of tax on the whole of the statutory loss, but will reduce such loss by the inclusion of the taxed interest and dividends which are actually trading receipts.

In the case of *Rex v. Commissioners of Income Tax, ex parte Commissioners of Inland Revenue (Explorations Co., Ltd.)* ((1904), 91 L.T. 94), claim for repayment was allowed although there was only a statutory loss, and no actual loss was proved; but in practice the Commissioners refuse to follow this decision.

The restrictions above mentioned do not affect the loss available under § 33, 1926, however, since in that case the "adjusted" loss must be taken.

Section 34 applies to companies as well as to individuals, since a company is a person within the meaning of the section.

The loss to be taken is, legally, that of the FISCAL year (found by splitting accounts where necessary) but the Revenue will allow the accounting year to be treated as co-terminous with the fiscal year, if the taxpayer agrees to adhere to this method.

For 1932-33 onwards, a concession is given whereby the wear and tear allowance can be added to a loss for the purposes of a § 34 claim. The concession is that so much of the wear and tear allowance as cannot be used in the assessment of the year, but not exceeding the allowance for the year of assessment, is available to be added to the loss (or used to convert a profit into a loss). The amount of wear and tear allowance so used for § 34 cannot then be carried forward.

Illustrations.

(1) Profit for year ended 31st December, 1931	£500
Loss " " " " " 1932	100
Wear and Tear Allowance 1932-33	£680
do, brought forward	310
Other Income, Schedule A Net Annual Value	£700
Schedule D, Case I Assessment, 1932-33	£500
Less Wear and Tear Allowance	
brought forward	£310
for year	680
	990

Unabsorbed Wear and Tear Allowance £190'

SECTION 34 CLAIM

Loss, 1932-33	£100
<i>Id est</i> Unabsorbed Wear and	
Tear Allowance	190

AVAILABLE AGAINST SCHEDULE A £590

The unabsorbed Wear and Tear Allowance has been used for the purposes of the Concessional § 34 claim, and cannot be carried forward, but the Case I assessment in 1933-34 will be NIL. The net effect is that a repayment is given on the £190 instead of its being carried forward to reduce later assessments. Had the Schedule A assessment been £200 only, then £100 of the unabsorbed Wear and Tear Allowance would be used for the concessional § 34 claim, leaving £90 to be carried forward as Wear and Tear Allowance.

(2) In the above illustration, had the Wear and Tear Allowance for 1932-33 been £310, and that brought forward £680 only £310 could have been added to the loss, the balance of the unabsorbed Wear and Tear Allowance (£180) being available for carry forward as wear and tear.

(3) Profit for year 30th September, 1931	£200
do 1932	£50
Wear and Tear Allowance, 1932-33	£275
Case I Assessment, 1932-33	£200
Less Wear and Tear Allowance, 1932-33	275
Unabsorbed Wear and Tear Allowance	£75

SECTION 34 CLAIM, 1932-33 —

Profit year ended 30th September, 1932 ..	£50
<i>Deduct</i> Concessional Wear and Tear ..	75
	<hr/>
Notional Loss	£25

Tax can be reclaimed under Section 34 on £25 against other income.

The 1933-34 Case I Assessment will be nil, i.e., the balance of the 1932-33 Wear and Tear Allowance (£75 - £25) still offsets the £50 profits.

The Wear and Tear Allowance for 1933-34 will, of course, be carried forward or used for concessional treatment.⁴

In the case of partnerships, the concessional allowance will only be made if all the partners (not only those claiming under § 34) agree that the relief for wear and tear allowance so given shall be binding on the firm, and not only on those partners who have claimed under § 34, so that in the event of a subsequent change in the partnership the partners who have not claimed under § 34 shall be precluded from claiming further relief in respect of such wear and tear allowance.

Prior to 1932-33, the concession was different in that the amount of the wear and tear allowance for the year of assessment could be added to the loss for that year for the purposes of a repayment under § 34, but the amount of the wear and tear allowance on which repayment was so made had to be brought in as a profit of that year in computing subsequent assessments. The wear and tear allowance could be used to convert a profit into a loss in similar circumstances. But wear and tear brought forward could not be used to add to a loss nor to turn a profit into a loss. Since the concession may be encountered in considering past years for various purposes, an example is given hereunder.

Illustration (Concession applicable for years up to and including 1931-32).

D. Ltd., made up its accounts annually to 31st December. Its adjusted profits were as follows - 1928- £2,500, 1930-£150; 1931-£400; 1932-£8,000. In 1929 an adjusted loss of £2,000 was sustained. The Wear and Tear allowances were agreed at: 1929-30-£220, 1930-31-£190, 1931-32-£160, 1932-33 £430; 1933-34-£390

The assessments and claims would be as follows: -

YEAR	IF NO § 34 CLAIM IS MADE	IF A § 34 CLAIM IS MADE
1929-30	Profits of 1928 £2,500 Less Wear and Tear 220 £2,280	Original Assessment Repayment claimed on Loss £2,000 Add Wear and Tear 220 £2,280 Tax ultimately borne on £60
1930-31	Loss in 1929 Carry forward Wear and Tear Allowance £190 and Loss £2,000	Nil Amount of Wear and Tear Allowance on which repayment was made in 1929-30 Less Wear and Tear for 1930-31 190 Assessment £30
1931-32	Profit of 1930 150 Less Wear and Tear £160 do do 190 30 Carry forward Wear and Tear £200 and Loss £2,000	Profit of 1930 150 Less Wear and Tear 160 Nil Carry forward Wear and Tear £10 £10
1932-33	Profit of 1931 £400 Less Wear and Tear £130 do do 200 60 Carry forward Wear and Tear £230 and Loss £2,000	Profit of 1931 400 Less Wear and Tear 130 40 Nil Carry forward Wear and Tear £10 £10
1933-34	Profit of 1932 £8,000 Less Wear and Tear £390 do do 230 620 Less Loss 7,380 £2,000	Profit of 1932 8,000 Less Wear and Tear 390 do do 230 430 7,570

It will be seen from the above example that

(1) Wear and Tear Allowance must be set-off before the loss brought forward.

(2) The total assessments over the five years amount to £7,660 under either method, but

(3) If a claim is made under § 34, repayment is obtained in the year in which the loss is sustained, i.e., when the money

is likely to be most useful, whereas under § 33 the benefit is not received until some years afterwards, when profits are being made.

(4) An anticipated change in the rate of tax would be an important factor in arriving at a decision as to which provision would give the greater ultimate advantage.

Losses carried forward beyond the six years' limit.

Wear and tear allowances must be deducted in assessments before deducting any loss brought forward under § 33, Finance Act, 1926, or § 19, Finance Act, 1928. It may be, therefore, that at the expiration of six years following the year in which a loss was incurred, relief for the loss, or any part thereof, has not been obtained, owing to the fact that wear and tear allowances have absorbed the assessments which would otherwise have been available for relief in respect of the loss. (This position is now met by § 19, 1932, under which so much of the loss in respect of which relief has not been given (at the end of the period of six years for which a loss can be carried forward) as represents the amount in respect of which relief could have been given but for the deduction of the wear and tear allowance, may be carried forward beyond the period of six years until it can be utilised. The net effect is therefore that a taxpayer can now utilise losses or wear and tear allowances to his best advantage.

The relief does not extend to the set-off of a loss under § 29, Finance Act, 1927 (*i.e.*, losses utilised against income received from a company to which the taxpayer has transferred his business). A deduction for wear and tear must not be utilised more than once under this section.

Any relief under § 33, Finance Act, 1926, from an assessment is to be given in respect of a loss sustained

in the preceding six years before it is used in respect of a loss sustained in any year not within those six years (§ 19 1932).

Illustration.	Profits	Losses.	Wear and Tear Allowance.
	£	£	£
1930-31	160		100
1931-32		600	95
1932-33	100		91
1933-34	220		87
1934-35	370		84
1935-36	110		81
1936-37		200	79
1937-38	430		77
1938-39	590		75

Year	Assessment	W. & T. Losses			
		£	£	£	£
1931-32	Profits 1930-31	160			
	Less W & T	95			
		60			
1932-33	Profits 1931-32	Nil	91	600	
1933-34	Profits 1932-33	100			
	Less W & T 1933-4	87			
	.. b f	13			
		100	Nil	78	600
1934-35	Profits 1933-34 ..				
	Less W & T 1934-5	84			
		162			
	Less Loss		Nil		542
1935-36	Profits 1934-5 ..	370			
	Less W & T, 1935-6	81			
		289			
	Less Loss b, f ..	289			
		Nil			253

Year.	Assessment.	£	W. & T. c/f.	Losses c/f. £
1936-37	Profits 1935-36	110		
	Less W & T 1936-7 . .	79		
		<hr/> 31		
	Less Loss b/f	31		
			Nil	222
1937-38	Profits 1936-37		Nil	77
				222 (1931-2)*
				200 (1936-7)†
1938-39	Profits 1937-38	430		
	Less W & T. 1938-9 . .	£75		
	,, b/f	77		
		<hr/> 152		
		278		
	Less Loss 1936-7	200		
	Less Substituted loss			
	b/f under § 19			
	F.A. 1932	78		
			Nil	144

* This loss, incurred in the year 1931-32 cannot be carried forward under § 33, Finance Act, 1926, beyond the year 1937-38, but, under § 19, Finance Act, 1932, so much thereof as could have been utilised, but for the deduction for Wear and Tear Allowances, may continue to be carried forward.

The amount utilised in Wear and Tear Allowances is

	£
1933-4	100
1934-5	162
1935-6	81
1936-7	79
	<hr/> £422

but as the total unutilised loss is only £222, this amount may continue to be carried forward.

† The loss in 1936-7 must be utilised within the following 6 years before relief is given in respect of the substituted loss for 1931-32.

The following illustrations exemplify the application of § 34 claims in various circumstances.

Illustration.

A farmer had the following income for 1932-33

Farm, assessed under Schedule B, £600

Directors' Fees, 1931-32, £480

Interest on 5% War Loan £500.

Dividends free of tax £200

For the year ended 31st March, 1933, he paid bank interest on overdraft of £100 and he had reclaimed tax under § 36, Income Tax Act, 1918, in respect thereof. His accounts for that year showed an adjusted loss of £800, after charging the bank interest, and he made claims under Rule 6, Schedule B, and § 34. He is a married man, with four children of whom two are over 16, one of the latter being still at school.

COMPUTATIONS, 1932-33

	total	For § 34 claim
Schedule B	£600	Nil (Rule 6) ¹
Schedule E	480	£480
Schedule D, Case III	500	500
Dividends free of tax	200	200
	2,100	1,500
<i>Less</i> Bank Interest	100	
Loss		800
	2,000	700
<i>Deduct Allowances:-</i>		
Earned Income 1/4th of £1,080	£216	Nil
Personal	150	150
Three Children	130	130
	496	280
Taxable Income	£1,504	£420
Chargeable £175 at 2.6	£21 17 6	£21 17 6
1,329 at 5	332 5 0	61 5 0
		83 2 6
Tax borne	£354 2 6	354 2 6
✓ Tax Repayable		£271 0 0

The claim may be computed :—

Cancellation of Schedule B assess- ment under Rule 6	£600	
Less Earned Income Allowance	120	
		£480 at 5/- £120 0 0
Cancellation of Schedule E assess- ment	£480	
Less Earned Income Allowance	96	
		384
Balance of loss £(800 - 480)		320
		<u>£704 at 5/-</u> 176 0 0
		296 0 0
Less Cancellation of repayment under § 36 as interest is debited in the Accounts, £100 at 5/-		25 0 0
		<u>£271 0 0</u>

Had the farmer made no § 34 claim he would presumably have claimed to be assessed under Schedule D for 1933-34, and again in successive years, carrying the loss forward under § 33 (1926). If in any year he omitted to claim to be so assessed under Schedule D, the loss could not be carried forward further. It should be noted that he could claim under Rule 6, Schedule B, without claiming under § 34. The farmer has an advantage under § 34 as compared with the ordinary trader, since the farmer claims *first* under Rule 6, thus cancelling the assessment, whereas, in the case of a trader, the original assessment stands, the net result is that the farmer saves the tax on the amount of the assessment as well as being repaid under § 34 against other income, whereas the trader is repaid only under § 34.

Illustration.

A, B, and C, are in partnership sharing profits and losses equally, after charging salaries and interest on capital, amounting to—A., £600; B., £800, C., £400.

For the year ended 31st December, 1932, the adjusted profits were £300; for 1933 the adjusted loss was £240.

1933-34, assessment £300.

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Divided among partners --		A.	B.	C.
£		£	£	£
300	Salaries and Interest ..	600	800	400
1,800	" Loss " ..	500	500	500
£1,500		£100	£300	Loss £100

Although the result of the division is as shown, the firm can only be assessed on £300, which is shared by A and B, in the ratio of 100 : 300, *i.e.* A £75, B £225. C can claim no relief on his share although from his point of view it is a loss. Although the claims under both § 34 and § 33, 1926, are personal and individual claims to be made by each partner separately, no claim for relief in respect of a loss can be made by any partner where the *firm* has an adjusted profit.

For the purpose of arriving at the amounts of loss on which the individual partners may claim relief, the loss of £240 is divided

£		A	B	C.
		£	£	£
240	Salaries and Interest	600	800	400
1,800				
2,040	Balance ..	680	680	680
	Loss	£80	Profit £120	Loss £280

Since the *firm* has made a loss of £240, B's share for tax purposes is nil, and A and C share the adjusted loss of £240, in the ratio, 80 : 280, *i.e.*, A $\frac{2}{7}$ of £240 = £53, and C $\frac{5}{7}$ of £240 = £187. A can therefore claim under § 34 on £53 and C on £187, or either (or both) may elect to allow the loss to be carried forward under § 33, 1926, against their respective shares of the next assessment.

The claim under § 34 must be made by reference to the taxpayer's Statutory Total Income from all sources, and automatically reduces such total income. In the

case of an individual, this may make it inadvisable to claim the relief, as the following illustration shows.

Illustration.

A. carried on a business in which in the year ended 31st December, 1930, he made a profit of £700. In 1931 he made a loss of £900, in 1932 a profit of £1,000.

His wife had an earned income of £100 per annum, and he received Director's Fees of £200 in 1930-31, and thereafter £300 per annum. He also owned £4,000 5% War Loan, converted into 3½% War Stock

His computations of liability would be as follows:—

If no § 34 Claim made—		If § 34 claim made—	
1931-32—			
Business Profits, 1930	.. £700		£700
Director's Fees	.. 200		200
Wife's earned income	.. 100		100
	1,000		1,000
		<i>Deduct Loss claimed</i>	
		under § 34	.. 900
			100
War Loan Interest	.. 200		200
Statutory Income	.. 1,200		300
<i>Deduct Allowances</i>			
Earned Income,			
1/4th of £1,000	.. £200	1/4th of £100	20
Personal	.. 150		150
Additional	.. 45		45
	395	—	215
Taxable Income	.. <u>£805</u>		<u>£85</u>
<i>Chargeable</i>			
£175 at 2 6	.. £21 17 6		
630 at 5	.. 157 10 0	£85 at 2 6	10 12 6
	— — — — —		— — — — —
Tax payable	.. £179 7 6		£10 12 6

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1932-33—				£°
Business Profits	..	Nil.		Nil.
Director's Fees	..	300		300
Wife's Income	..	100		100
War Loan Interest	..	200		200
		600		600
<i>Deduct Allowances—</i>				
Earned Income 1/3th of				
£400	.. ..	£80		£80
Personal	.. ..	150		150
Additional	.. ..	45		45
		<u>£325</u>		<u>£325</u>
Chargeable—				
£175 at 2 6		21 17 6		21 17 6
150 at 5 -		37 10 0		37 10 0
Tax payable		£59 7 6		<u>£59 7 6</u>
1933-34—				
Business Profits	..	£1,000		£1,000
Less Loss brought forward		900		
		100		
Director's Fees		300		300
Wife's Income	..	100		100
War Loan Interest	..	200		200
		£700		£1,000
<i>Deduct Allowances—</i>				
Earned Income 1/3th of				
£500	.. ..	100	1/3th of £1,400	£280
Personal	.. ..	150		150
Additional	.. ..	45		45
		295		475
		<u>£405</u>		<u>£1,125</u>
Chargeable—				
£175 at 2 6	..	£21 17 6	£175 at 2 6	£21 17 6
230 at 5 -	..	57 10 0	950 at 5	237 10 0
Tax payable	..	<u>£79 7 6</u>		<u>£259 7 6</u>

It will thus be seen that over the three years the total tax suffered in this case is *more* if the § 34 claim is made than if it is not made. This arises owing to the fact that if the claim is made effect is not given to part of his allowances in 1931-32. A change in the rate of tax would also affect the amounts

NOTE.—The authorities require the loss under § 34 to be set first against statutory earned income, so as to restrict the earned income allowance. It is understood that at least one body of General Commissioners have held that this is wrong, but it is nevertheless the practice of the Inland Revenue.

It should be noted that all claims under § 34 are to be determined by the Special or General Commissioners, against whose decision there is no appeal, since the application for relief is not an appeal against an assessment (*Bruce v. Burton*, (1901), 4 T.C. 399).

A concession, similar to that allowed in respect of wear and tear was in practice allowed prior to 1932-33 in respect of the amount of debenture interest and other annual charges paid, *i.e.*, they might be added to the amount of the loss for the purposes of a claim under § 34, but had then to be brought into assessment in the following year, to the extent that Income Tax was refunded on the amount of the charges. This concession had a very restricted application, in view of § 19, 1928, and the operation of Rule 21, General Rules (*see* Chap. VII, § 3), and was withdrawn for 1932-33 and subsequent years.

Illustration (not applicable after 1931-32).

R. Ltd. had the following adjusted profits for the calendar years—1929, £5,000; 1930, £400; 1931, £6,000. Wear and tear allowances were agreed at—1930-31, £600; 1931-32, £520; 1932-33, £430.

The company paid interest each year on £10,000 4% debentures. It claimed relief under § 34.

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1930-31.	Assessment on preceding year's profits	£5,000
	<i>Less</i> Wear and Tear Allowance ..	600
		<hr/> 4,400
§ 34 Claim .—	Profit for year ..	£400
	<i>Deduct</i> Wear and Tear Allowance ..	£600
	Debenture Interest	400
		<hr/> 1,000
	Concession loss	600
		<hr/> —
	Net amount on which charged	<u>£3,800</u>
1931-32.	Assessment on preceding year's profits ..	£400
	<i>Add</i> amount on which repayment made under concession ..	600
		<hr/> 1,000
	<i>Less</i> Wear and Tear Allowance	520
		<hr/> £480

It will be seen that the profits still in charge are sufficient to cover the debenture interest in each year.

The reader will have observed that for the purposes of the illustrations of § 34 claims, the accounting year is considered to be co-terminous with the fiscal year. As already stated, this is strictly concessional; the legal basis is the loss for the *fiscal* year, and where accounts are made up for irregular periods, and in the first and last years of a business, accounts are always "split" in order to arrive at the actual loss incurred in the fiscal year.

Where a loss is incurred in the first year of a business, such loss will normally enter into the computation of the assessments for several fiscal years. To the extent that it is used to offset a profit in any year, relief has been effectively allowed, and such portion cannot be carried forward; nor can a notional loss be carried forward (*C.I.R. v. Adamson* (1932), 11 A.T.C. 481.)

Illustration.

(1) A. commenced business on 1st January, 1929, and discontinued on 30th September, 1934. The adjusted profits and losses were as follows :-

Year ended 31st December,	1929	Loss	£1,400
do	1930	Profit	2,000
do.	1931	„	4,000
do.	1932	„	1,200
do	1933	Loss	1,000
Period ended 30th September, 1934	„		100

A.'s wife had an earned income of £300 per annum. A. owned the freehold house in which they lived, assessed at £100 (net). In view of the increase in the rate of tax in 1930-31, and the effect of his allowances, A. did not claim under § 34 in respect of the loss in 1929, but made a claim in respect of the losses in the closing years.

YEAR.	ASSESSMENTS.				£
1928-29	Proportion of first accounts	..	..	..	Nil.
1929-30	Result of first 12 months	..	.		Nil.
1930-31	Previous year's results	..	..	..	Nil.
1931-32	do	..	..	£2,000	
	Less Loss brought forward	..	1,400		
				<hr/>	600
1932-33	Previous year's results	..	..	..	4,000
1933-34	do.	..	..	1,200	
{	Less § 34 claim	..	..	1,000	
				<hr/>	200
1934-35	" Actual "	..	..	..	Nil.

But claim made under § 34 against other income, on loss incurred during the fiscal year, *i.e.*, of £100 = £67.

(2) S. commenced business on 1st June, 1931. He made up his accounts to 31st March, 1932, showing an adjusted loss of £61. His accounts to 31st March, 1933, showed a profit of £144.

YEAR.	ASSESSMENT.	£	£
1931-32	Actual " profits " from 1st June, 1931— 5th April, 1932		Nil.
1932-33	Result of first 12 months, 1st June, 1931 -- 31st March, 1932, loss	-61	
	2 months to 31st May, 1932, profit $\frac{1}{2}$ of £144	+24	
	£24 profit has been off-set against £24 of the £61 loss, leaving to carry for- ward only		Nil.
1933-34	Previous years' profits	144	
	<i>Less</i> loss as above	37	

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**§ 3.—Annual charges carried forward as a
" loss "—Rule 21, All Schedules Rules,
and § 19, 1928.**

Where a person has been assessed to tax for any year of assessment, not being a year prior to 1927-28, under Rule 21 of the General Rules, in respect of a payment made wholly and exclusively for the purposes of a trade, profession, or vocation (not being a payment of or on account of copyright royalties to which § 25, 1927, applies) the amount on which tax has been paid under that assessment will, for the purposes of § 33, 1926, be treated as though it were a loss sustained in that trade, profession, or vocation, and, subject to the provisions of that section, relief in respect thereof will be allowed in computing that person's liability to tax in respect of the profits or gains of that trade, profession or vocation for the six years following the said year of assessment.

Provided that no relief shall be allowed under this section in respect of any such payment or any part of

any such payment which is not ultimately borne by the person assessed or which is charged to capital (§ 19, 1928).

As a result of the rules enumerated in Chap. IV, § 6, in any year in which a person has insufficient profits taxed at source or by assessment to cover the charges from which tax is deductible, he is required to pay over the tax on the excess of such charges over his taxable profits under Rule 21, General Rules.

But such charges are not allowed as a debit in his accounts, and he would thus, indirectly, be charged twice on such excess charges if it were not for § 19—1928.

Illustration.

A limited company made the following profits —

Year ended 31st March, 1929	..	£2,000
do. 1930	..	100
do. 1931	..	500
do 1932	..	4,000

The company also had an income from taxed sources of £200 per annum, and paid debenture interest of £700 per annum. This interest has, of course, been "added back" in arriving at the above profits.

The assessments on the company would be as follows .—

1929-30—£2,000—which is sufficient to cover the debenture interest, from which tax is therefore deducted under Rule 19, General Rules, and retained by the company.

1930-31—£100—The profits "brought into charge to tax" in this year are thus £100 plus the taxed income of £200, a total of £300. To that extent tax is deducted from debenture interest under Rule 19, but the tax deducted from the remaining £400 of debenture interest is under Rule 21, and an assessment (in addition to the Case 1 assessment of £100) will be raised on this £400, but this £400 can then be carried forward as a loss (§ 19, 1928).

1931-32—£500, less "loss" brought forward £400 = £100. Similar remarks to those relating to 1930-31 apply, and £400 will be assessed under Rule 21 and carried forward as a "loss."

1932-33—£4,000, less "loss" brought forward £400 = £3,600. This assessment is sufficient to cover the debenture interest, from which tax is therefore deducted and retained by the company under Rule 19.

§ 4.—Business transferred to a Limited Company.

Owing to the operation of § 32, 1926, when a business is sold to a limited company, it must be assessed as if it were discontinued and recommenced on the date of transfer. As a result, if a loss were incurred prior to the transfer, no relief would be available under § 33, 1926, in assessments on the company subsequent to the transfer. Where the members of the company are the same persons as those who were engaged in the former business this would entail a hardship. To avert this, it is provided by § 29, 1927, as follows:—

29.—(1) If, where a business carried on by any individual or by any individuals in partnership has, whether before or after the passing of this Act, been TRANSFERRED TO A COMPANY IN CONSIDERATION SOLELY OR MAINLY OF THE ALLOTMENT OF SHARES OF THE COMPANY TO THAT INDIVIDUAL OR THOSE INDIVIDUALS, the total income as computed for the purposes of Income Tax of any individual to whom or to whose nominee or nominees shares have been so allotted FOR ANY YEAR OF ASSESSMENT THROUGHOUT WHICH HE IS THE BENEFICIAL OWNER OF THE SHARES and throughout which the company carries on the business, includes any income derived by him from the company, whether by way of dividends on those shares or otherwise the provisions of § 33, Finance Act, 1926, shall apply as if the income so derived were profits and gains on which that individual was assessed under Schedule D in respect of that business for that year.

Provided that—

(i) where under the said § 33, as applied by this section a loss falls to be deducted from or set off against any such income for any year of assessment, the deduction or set

off shall be made in the first place against that part, if any, of the income in respect of which the individual has been or is liable to be assessed to tax for that year; and

(ii) where any loss, or any part of a loss, falls to be deducted from or set off against any part of the income from which tax was deductible by the company, the individual shall on giving notice in writing to the surveyor not later than twelve months after the end of the year of assessment to which the claim relates, be entitled to claim an appropriate repayment of tax, and the provisions of the Income Tax Acts relating to claims for repayment of tax in respect of any allowance or deduction shall, subject to any necessary modification, apply to claims for repayment under this section.

(2) This section in its application to the year of assessment in which a business is transferred as aforesaid shall have effect as if for the reference to the year of assessment throughout which the individual is the beneficial owner of the shares and throughout which the company carries on business there were substituted a reference to the period from the date of transfer to the fifth day of April next following.

It should be noted that in this case, as in the case of all other loss claims, a partner can claim relief in respect of his share of the firm's loss, irrespective of what claims have been made by other partners in respect of their shares of loss as to the date of transfer (*see pp. 275, 286 and 297*). The loss is set against the transferor's earned income from the company before applying it to unearned income.

Illustration.

A. and B. carried on business in partnership until 31st May, 1932, when they transferred their business to A. B. Ltd, being allotted shares as consideration for the transfer. A. and B. shared profits equally.

The adjusted profits and losses were as follows—

A. and B.

Year ended 30th September, 1929	Profit	..	£8,000
do. 1930	Loss	..	5,000
do. 1931	Profit	..	2,000

A. B. Ltd.

Year ended 30th September, 1932	Profit ..	£1,700
do. 1933	„ ..	1,300

Directors' Fees were paid as follows —

Four months ended 30th September, 1932,	£400 each.
Year " " 1933,	1,200 "

Dividend paid 1932, £500 each.

✓ A. made a § 34 claim in 1930-31.

ASSESSMENTS

Year.	A's share	B's share	Total Assessment on Firm
1930-31	£4,000. A. claims under § 34 on £2,500	£4,000	£8,000.
1931-32	Nil.	Nil.	Nil.
Increased under § 31, 1926, to actual profit of penultimate year, viz			
	£1,125.	£1,125	1/2 of £2,000 + 1/2 of £1,607* = £2,250
B's assessment is reduced by loss brought forward to nil, reducing firm's assessment to £1,125, to be borne by A. B. has £1,125 loss to carry forward			
*See below			

1932-33 The profit for the year ended 30th September, 1932, is apportioned between the firm and the company as follows :—

Profits per accounts	£1,700
Add Directors' Fees wholly chargeable to company	800
	<hr/>
	£2,500
Firm's proportion- 8 months ..	£1,607
Company's proportion 4 months	£833
Less Directors' Fees	800
	<hr/>
	33
	<hr/>
	£1,700

Firm's assessment (April 6th to May 31st, 1932),

$$\frac{1\frac{1}{2}}{8} \times £1,667 = £382.$$

A.'s proportion	<u>£191</u>	
B.'s ,,	£191	
Less Loss b/f	<u>1,375</u>	= nil reducing firm's assessment to £191 to be borne by A.
Leaving to c/f	£1,184	
<i>May 31 - 1932 = £1,184 Co. s. 1st year of assessment</i>		
Directors' fees :-		
A. 400 + $\frac{1}{2}$ of £1,200	<u>£1,000</u>	
B. do.	1,000	
Less Loss b f	<u>1,184</u>	Nil.
Leaving balance ..	£184	

to claim as set off against dividend, reclaiming the appropriate tax overpaid.

It should be noted that any Wear and Tear allowances to which effect has not been given in the vendor's assessments cannot be carried forward to the company.

The company's assessments would be--

$$1932-33-£33 + \frac{1}{2} \text{ths of } £1,300 = £683$$

$$1933-34-£33 + \frac{1}{2} \text{ths of } £1,300 = £900$$

1934-35--Decided upon by Commissioners

of Inland Revenue under § 34,

$$1926\text{---probably} \quad \dots \quad £1,300$$

Subject to any claim arising for adjustment of the assessments for 1933-34 and 1934-35 to the actual profits of those years.

§ 5.—Losses not incurred in carrying on a Business.—Case VI.

Where a person is assessed in respect of any profits or gains under Case VI, Schedule D, any loss arising in respect of another source assessable under Case VI may be set-off against the profits, and any balance of such loss may be carried forward in a similar manner

to business losses, but only against Case VI assessments. (It must be noted that a § 34 claim cannot be made in respect of such a loss.) The relevant provisions are contained in § 27, 1927, and are as follows :—

27.—(1) Where in any year of assessment a person sustains a loss in any transaction, whether he was engaged therein solely or in partnership, being a transaction of such a nature that, if any profits had arisen therefrom, he would have been liable to be assessed in respect thereof under Case VI of Schedule D, he may claim that the amount of the loss sustained by him shall, as far as may be, be deducted from or set-off against the amount of any profits or gains arising from any transaction in respect of which he is assessed for that year under the said Case VI, and that any portion of the loss for which relief is not so given shall, as far as may be, be carried forward and deducted from or set-off against the amount of any profits or gains arising from any transaction in respect of which he is assessed under the said Case VI for any of the six following years of assessment

(2) In the application of this section to a loss sustained by a partner in a partnership the expression "the amount of any profits or gains arising from any transaction in respect of which he is assessed" shall be taken to mean in respect of any year such portion of the amount on which the partnership is assessed under Case VI in respect of any transaction as he would be required under the Income Tax Acts to include in a return of his total income for that year.

(3) Any relief under this section by way of the carrying forward of the loss shall be given as far as possible from the first subsequent assessment in respect of any such profits or gains as aforesaid for any year within the said six following years, and, so far as it cannot be so given, then from the next such assessment and so on

(4) The provisions of this section shall extend so as to apply to a loss sustained in the year ending on the fifth day of April, nineteen hundred and twenty-seven.

Illustration.

A. during the year 1932-33 incurred a loss of £1,000 on an underwriting speculation. In the same year he made a profit of £400 from letting furnished rooms. Under § 27, 1927, the loss will be set-off against the profit, extinguishing the assessment, and the balance of £600 can be carried forward and set against the next Case VI assessment on any annual gain.

Had there been no profit of any kind assessable under Case VI in 1932-33, then the whole £1,000 loss could be carried forward.

CHAPTER VIII.

Sur-Tax.

§ 1 —THE BASIS OF SUR-TAX.

2 —THE ASSESSMENT OF SUR-TAX.

3.---DEALINGS *cum* AND *ex* DIVIDEND.

4 ---LIFE ASSURANCE CONTRACTS AND SUR-TAX.

5 ---THE PREPARATION OF A STATEMENT FOR SUR-TAX PURPOSES

6 - SUR-TAX ON THE INCOME OF MARRIED WOMEN.

7.- SUR-TAX ON UNDISTRIBUTED INCOME OF A COMPANY

8 --SUR-TAX ON INCOME OF INFANTS.

9 - RECOVERY OF SUR-TAX DUE FROM BENEFICIARY UNDER DISCRETIONARY TRUST

CHAPTER VIII.

SUR-TAX.

§ 1.—The Basis of Sur-Tax.

By the Finance Act, 1927, § 38, Income Tax for the year 1928-29 and every subsequent year is charged at a standard rate and, in the case of an individual whose total income from all sources exceeds a stated amount, at a rate or rates in excess of the standard rate in respect of any part or parts of his income in excess of that amount. The tax charged in excess of the standard rate is called the "sur-tax" and is payable as a deferred instalment of Income Tax on the 1st January following the end of the year of assessment (§ 42—1927); *i.e.*, the sur-tax in respect of 1932-33 is due and payable on 1st January, 1934.

The tax was formerly known as super-tax.

The principle of super-tax was introduced for the first time by the Finance (1909-10) Act, 1910; and by § 66 of that Act an extra 6d. in the £ was payable where the total statutory income exceeded £5,000, on the amount by which it exceeded £3,000. The basis of the tax was later modified and made payable,

where the total statutory income exceeded £2,000 upon the amount by which such income exceeded £2,000 (Finance Act, 1920, § 15). Super-tax was abolished for the year 1929-30 and subsequent years (§ 38—1927). For technical reasons, both super-tax and sur-tax were payable in respect of 1928-29. The provisions of the Acts relating to super-tax apply *mutatis mutandis* to sur-tax.

The rates of super-tax for the years 1925-26 to 1928-29 inclusive, and of sur-tax for 1928-29, were as follows :—

In respect of—

The first	£2,000	..	..	Nil.
The next	£500	..	..	9d. in the £
„	£500	..	..	1/- „
„	£1,000	..	..	1/6 „
„	£1,000	..	..	2/3 „
„	£1,000	..	..	3/- „
„	£2,000	..	..	3/6 „
„	£2,000	..	..	4/- „
„	£5,000	..	..	4/6 „
„	£5,000	..	..	5/- „
„	£10,000	..	..	5/6 „
The remainder		..	..	6/- „

The Finance Act, 1930, introduced the principle of fixing the rates of sur-tax in arrear, *i.e.*, the 1930 Act fixed the rates of sur-tax payable for 1929-30. The reason for this is that the Chancellor of the Exchequer, in framing his Budget, naturally requires any alteration in the rates to be financially effective in the year for which he budgets, not in the following year, as would be the case if the rates of sur-tax were fixed at the same time as the standard rate.

By the Finance Act, 1930, the sur-tax for 1929-30 was charged at rates in the pound which exceed the

standard rates by the amounts specified in the second column of the following table :—

In respect of—

The first	£2,000	..	..	Nil.	
The next	£500	..	..	1/- in the £	1/-
„	£500	..	..	1/3	1/3
„	£1,000	..	..	2/-	2/-
„	£1,000	..	..	3/-	3/-
„	£1,000	..	..	3/6	3/6
„	£2,000	..	..	4/-	4/-
„	£2,000	..	..	5/-	5/-
„	£5,000	..	..	5/6	5/6
„	£5,000	..	..	6/-	6/-
„	£10,000	..	..	6/6	6/6
„	£20,000	..	..	7/-	7/-
The remainder		..	..	7/6	7/6

For 1930-31, 1931-32 and 1932-33, the above rates are increased by 10%.

As respects sur-tax charged for the year 1929-30 or for any subsequent year, the amount of sur-tax payable in respect of the total income of an individual for the year of assessment in which he dies shall not exceed the amount of sur-tax which would have been payable if Income Tax had been chargeable for that year at the same rates as for the year preceding that year, and all such adjustments and repayments of tax shall be made as may be required in order to give effect to the provisions of this section (§ 26-1930).

This provision enables an executor to proceed with the distribution of the estate knowing that he has reserved adequately for sur-tax by computing it at the rates for the previous year (which he knows), whereas if a reduction is made for the year of assessment in which the death occurred, the estate will

benefit. Were it not for this provision an executor would have to wait for the following Finance Act before he knew the full liability.

The total income upon which the sur-tax is payable is based on the total statutory income for the year, estimated in the same manner as the total income from all sources is estimated for the purpose of allowances or deductions under the Income Tax Acts.

Care must be taken to ensure that only the final *statutory* income is taken into account, *e.g.*, where relief has been claimed under § 34, or where the Schedule A assessment is reduced by a claim in respect of repairs, maintenance, etc. A specific deduction is allowed in respect of any sum which the Treasury may allow for expenses in connection with a person in the service of the Crown abroad, which are necessarily incidental to the discharge of the functions of office, and for which no allowance has already been made (§ 42 (5)—1927). In addition, any interest payable on death duties may be treated as a "net" amount, and its gross equivalent deducted for sur-tax purposes.

It should be noted that in computing the statutory income for sur-tax purposes the earned income is taken to be the full amount of that income without deduction of any earned income allowance.

The allowances for Income Tax purposes, and Income Tax itself are not deductible for sur-tax computations, since the allowances are specifically limited to the income chargeable at the standard rate (§ 40—1927).

§ 2.—The Assessment of Sur-Tax.

Sur-tax shall be assessed and charged by the Special Commissioners, and, notwithstanding anything in the Income Tax Acts providing for the separate assessment of income arising from different sources, shall be assessed and charged in one sum (§ 42 (2) 1927).

The Special Commissioners may make an assessment or additional assessment in respect of sur-tax during any time within the year of assessment, or within the period allowed by the Income Tax Acts for the making of assessments and additional assessments in respect of Income Tax charged at the standard rate, and section twenty-four of the Finance Act, 1923 (which provides for relief in respect of error or mistake) shall, with any necessary modifications, apply to sur-tax as it applies to tax charged under an assessment under Schedule D (§ 42 (3) - 1927).

Where an assessment to Income Tax made at the standard rate has under the provisions of the Income Tax Acts become final and conclusive for any year, the assessment shall also be final and conclusive for the purpose of estimating total income for the purpose of sur-tax for that year, and no allowance or adjustment of liability on the ground of diminution of income or loss shall be taken into account in estimating the total income for that purpose, unless that allowance or adjustment has been previously made in respect of the Income Tax charged at the standard rate on an application under the special provisions of the Income Tax Acts relating thereto (§ 42 (4) ---1927).

Assessments in respect of sur-tax shall be subject to appeal to the Special Commissioners, except on such matters as under § 42 (4)---1927 (*see above*) are to be

regarded as having been finally and conclusively determined, and all the provisions of the Income Tax Acts relating—

(a) to persons who are to be chargeable with Income Tax at the standard rate and to assessments to such tax ;

(b) to appeals against such assessments ;

(c) to the collection and recovery of such tax ;

(d) to cases to be stated for the opinion of the High Court ;

shall, so far as they are applicable, apply to the charge, assessment, collection and recovery of sur-tax, and the Special Commissioners shall, for the purpose of assessment of sur-tax, have any powers of an Inspector of Taxes and, for the purposes of the representation of the Crown on any appeal before the Special Commissioners, any person nominated in that behalf by the Commissioners of Inland Revenue, shall have the same power at, and upon the determination of, the appeal as an Inspector has at, and upon the determination of, any appeal relating to Income Tax at the standard rate (§ 42 (7)—1927).

Even if the recipient of income resides outside the United Kingdom, he is assessable to sur-tax if the income arising in the United Kingdom, and subjected to Income Tax, is sufficient to involve liability, i.e., if such income exceeds £2,000.

An appeal against a sur-tax assessment must be made within 28 days from the date of service of the notice of assessment or such further date as the Special Commissioners may allow, and must specify the grounds of appeal (S.R. & O. No. 610 (1928) (5)).

Notwithstanding that an appeal to the Special Commissioners is pending against an assessment to Income Tax under Schedule D, or to sur-tax, such part of the tax assessed as appears to the Special Commissioners not to be in dispute shall be collected and paid in all respects as if it were tax charged by an assessment in respect of which no appeal was pending, and on the determination of the appeal any balance of tax chargeable in accordance with the determination shall be paid, or any tax overpaid shall be repaid, as the case may require (§ 24 -1930).

The Special Commissioners have jurisdiction to serve outside the United Kingdom either a notice requiring a return of income arising in the United Kingdom, or a notice of assessment to sur-tax (*Commissioners of Inland Revenue v. Hani* (1923), 2 K.B. 563).

Where income is taxed at the source, the amount returnable is the sum received increased by the amount of Income Tax appropriate thereto, and this is also the correct procedure where dividends are received free of tax (*Samuel v. Commissioners of Inland Revenue* (1918,) 2 K.B. 553). For tax purposes a dividend is receivable when it is declared payable (*Hurll v. Commissioners of Inland Revenue* (1922), 8 T.C. 292; and *Duncan v. Commissioners of Inland Revenue* (1923), 8 T.C. 433). In estimating under the Income Tax Acts the total income of any person, any income which is chargeable with income tax by way of deduction at the standard rate in force for any year shall be deemed to be income of that year, and any deductions which are allowable on account of sums payable under deduction of Income Tax at the standard rate in force for any year out of the property or profits of that

person shall be allowed as deductions in respect of that year, notwithstanding that the income or sums, as the case may be, accrued or will accrue in whole or in part before or after that year (§ 39 (2) —1927); but where it can be shown that the income so calculated for sur-tax for 1928-29, or for any later year represents more than the income attributable to a full year if the income were deemed to have accrued from day to day, and that in consequence the sur-tax payable for that year is more than 5 per cent. in excess of the sur-tax which would have been paid if the income had been deemed to accrue from day to day, the Special Commissioners shall adjust the liability to sur-tax for that year, and any succeeding year, so as to give such relief as may be just, having regard to any liability which would have arisen in previous years if the income had been apportioned and treated as part of his total income from all sources (§ 34—1927). (*See also* § 36—1927 (Chap. VIII, § 3.))

Illustration.

A limited company distributed its annual dividend on 31st March in each year until 1933, when it was not declared until 15th April. Thereafter the company reverted to declaration of the dividends in March. As a result, shareholders had two dividends receivable in 1933-34, but none in 1932-33. If any shareholder could show that his sur-tax liability for 1933-34 was increased thereby by more than 5% above what it would have been had the dividends been apportioned over the periods in respect of which they were declared, he could claim relief under the above provisions.

Where a beneficiary under a trust had a separate income of less than £2,000 per annum, and an annuity under the trust of £4,000 free of income tax and sur-tax, it was held that the trustees must pay out of the residue of the estate such proportion of the

total sur-tax payable by the beneficiary, as the £4,000 annuity with Income Tax added bore to the total amount of the sur-tax assessment (*Wimble v. Bowring* (1918), 34 T.L.R. 575). This is discussed in greater detail in Chapter XI, §§ 11-13.

Where a company distributes a bonus out of accumulated profits, to be satisfied by the issue of fully paid shares in the company, such shares cannot be assessed to sur-tax in the hands of the individual shareholders taking them. The shares in question are capital, and it is within the power of the company so to convert its accumulated profits into capital as to make the transaction one of capital against the whole world, including the Crown (*Commissioners of Inland Revenue v. Blott*; *Same v. Greenwood* (1921), 2 A.C. 171). Similarly, where a company issues its capitalised profits in the form of shares, even if an option is given to the shareholder to receive the value of the shares in cash, a shareholder who elects to receive them in shares is not liable to be assessed to Income Tax or sur-tax in respect of them (*Inland Revenue Commissioners v. Wright* (1926), 95 L.J.K.B. 982).

But if the shares in another company are distributed, such shares having been acquired out of accumulated profits, they represent income liable to sur-tax (*Wilkinson v. C.I.R.* (1931), 16 T.C. 52). The position might be different if the shares so acquired were required in the balance sheet to answer share capital (*ibid*).

Where the undivided profits of a company are distributed among the shareholders in the form of an issue of debenture stock, without any option to receive

anything in cash, such stock is an accretion to their capital, and is not liable to assessment to sur-tax (*Inland Revenue Commissioners v. Fisher's Executors* (1926), 95 L.J.K.B. 487).

On the liquidation of a company, that portion of the property of the company which represents undistributed profits held in reserve does not form part of the income, for purposes of sur-tax, of the shareholder to whom it is distributed by the liquidator (*Inland Revenue Commissioners v. Burrell* (1924), 93 L.J.K.B. 709); apart from any liability there may be upon undistributed profits of companies to which § 21 Finance Act, 1922, and § 31 Finance Act, 1927, apply (*see* Chap. VIII, § 7).

Where a company has taken over a business from a date prior to incorporation, or in certain cases prior to the date of the vending agreement, the profits made prior to the date when the business *de facto* changed hands are assessed upon the vendors, although they may, by the agreement, belong to the company.

The actual date when the company takes over the business, in the eyes of the law, is not necessarily the same date as that mentioned in the agreement. “. . . . the point is not when the contract became a binding contract necessarily. The question is whether there was a succession *de facto* to the business ” (*Todd v. Jones Bros.* (1930), 15 T.C. 396).

Any dividend paid will, to the extent that the dividend relates to such prior period, be exempt from sur-tax, being paid out of profits already assessed upon the vendors (*C.I.R. v. Roberts* (1925), 9 T.C. 603).

§ 3.—Dealings cum and ex dividend.

With a view to preventing the avoidance of sur-tax by habitual dealings in investments *cum* dividend, provisions are now made, applying to assessments for 1928-29 and later years, by which the Special Commissioners can require any individual to furnish them with a statement showing particulars of his dealings with assets in such a way that either no income had been received, or the amount of income received was less than the income for the period of the holding, if the income had been calculated as accruing from day to day.

If from the statement so furnished it appears that sur-tax would be avoided to the extent of MORE THAN 10 PER CENT. for any year, the income from the assets shall be treated as having accrued from day to day, and as part of his total income from all sources for purposes of sur-tax, such income being regarded as received as and when it is deemed to have accrued. Where, however, it can be shown that the avoidance of sur-tax was exceptional and not systematic, and that there had been no such avoidance in the three preceding years, the individual shall not be liable to assessment under this section (§ 33—1927).

The term “assets” for these purposes means:—

- (1) Stocks or securities, entitled to interest or dividend at a fixed rate only, but excluding stocks or securities on which the interest or dividend is dependent on the earnings of the company.
- (2) Any other stocks or securities and any shares if the transactions have not been effected

through a Stock Exchange in the United Kingdom and by a transfer bearing 1% stamp duty (33—1927).

Where shares are purchased *cum div.* the recipient is assessable to sur-tax in respect of the whole dividend received (*Commissioners of Inland Revenue v. Forrest* (1924), 61 S.L.R. 319), but for 1928-29 and thereafter some relief is granted in this connection; where the taxpayer proves that by reason of sales, or transfer of assets to him, the amount of sur-tax payable EXCEEDS BY MORE THAN 10 PER CENT. the amount of sur-tax which would have been payable for that year if the income from those assets had been treated as accruing from day to day, then, for purposes of assessment to sur-tax for that year, the income from the assets shall be treated as accruing due from day to day, and received by the taxpayer as and when it is deemed to have accrued (§ 35—1927).

The term “assets” is not defined for the purposes of § 35.

Any income arising in respect of any assets which for any of the purposes of §§ 33-35—1927, is deemed to have accrued from day to day or which is to be computed as if it were income that accrued from day to day shall—

- (a) if payable in respect of any stated period be deemed to have accrued from day to day during that period: and
- (b) if not payable in respect of any stated period, be deemed to have accrued from day to day during the period of twelve months next preceding the date on which that income was declared payable, or during the period between

the last previous declaration of a dividend (not being a dividend expressed to be an interim dividend in respect of a stated period), payment of interest, or other yield or produce of such asset and the date aforesaid, whichever period is less.

The provisions of the Income Tax Acts relating to appeals against assessments to sur-tax, including the provisions relating to the statement of a case for the opinion of the High Court on a point of law, shall, with any necessary modifications, apply for the purposes of §§ 33-35 -1927 (§ 36 -1927).

Illustration.

A. bought £40,000 3½% War Stock, *cum div.* on 20th April and sold it on 2nd June. On 1st June A. received a dividend of £700 for the half-year, and this must be included in his statutory income, although he only held the stock for six weeks. If, as a result, his sur-tax liability was increased by more than 10% over what it would have been had only six weeks' proportion of the dividend been taxable, A. can claim the accruals basis, as above.

Similarly, if B purchased 3½% War Stock, *curt div.* on 2nd December, and sold it on 20th April following, so that he had held it for 20 weeks but actually received no dividend the Revenue could apply § 33—1927.

§ 4.—Life Assurance Contracts and Sur-tax.

In recent years a practice has grown to considerable dimensions whereby sur-tax was avoided by means of single premium life insurance contracts. The major part of the premium would be paid by means of a loan from the company, on which interest was payable. This interest was an annual charge which reduced the total statutory income of the taxpayer.

To prevent the extension of the practice it is provided that in computing for the purposes of sur-tax the total income for any year of an individual who has entered into a contract of assurance, no deduction is to be allowed in respect of any interest on any borrowed money which has been applied directly or indirectly to or towards the payment of any premium under that contract, or of any sum paid in lieu of any such premium.

Where the benefit of a contract of assurance entered into by any person has become vested in another person, being an individual, the restriction applies in relation to that individual—

(a) as if the contract had been a contract entered into by him ; and

(b) in a case where the benefit of the contract became vested in him by virtue of an assignment and any payment was made by him in consideration of the assignment, as if that payment were the payment of a premium under the contract ; and

(c) in a case where, either as being the person in whom the said benefit is vested, or by reason of any agreement under or in pursuance of which the said benefit became vested in him, he pays any interest on any borrowed money, as if that money had been applied to the payment of a premium under the contract.

Where, however, the interest is payable at a rate not exceeding ten per cent. per annum the restriction does not apply to the interest payable in the following cases, and the interest so paid is allowed as a deduction for sur-tax purposes :—

(a) interest on borrowed money applied to or towards the payment of any premium under a contract of assurance entered into before the 15th April, 1930, which assures a fixed capital sum payable either—

- (i) on death only ; or
- (ii) on the expiration of a period of not less than ten years from the date of the commencement of the contract or on earlier death ;

(b) interest on money borrowed before the 6th April, 1929, unless—

- (i) the money was borrowed from an assurance company ; and
- (ii) the repayment thereof was secured on a contract of assurance ; and
- (iii) the premium in question was a premium under that contract ;

(c) interest on money borrowed mainly on the security of property other than a contract of assurance, if the premium in question either -

- (i) is payable under a contract of assurance entered into in order to provide against the failure of a contingent interest in any property, and to serve as additional security for the loan and for no other purpose ; or
- (ii) is the first of a series of premiums payable under a contract of assurance entered into solely in order to provide for the repayment of the money borrowed and does not exceed ten per cent. of the sum assured under that contract ;

(*d*) interest on borrowed money applied to or towards the payment of premiums under a contract of assurance which assures throughout the term of the contract a capital sum payable on death, if neither the amount of the first premium under the contract nor the amount subsequently payable by way of premiums thereunder in respect of any period of twelve months exceeds one-eighth of the capital sum payable on death ;

(*e*) interest on borrowed money applied to or towards the payment of premiums (not being premiums such as those specified in the preceding paragraphs of this subsection) each of which is one of a series of equal premiums payable at equal intervals of not more than one year, except so far as such interest exceeds in the year of assessment one hundred pounds in all.

The Special Commissioners are empowered to require such particulars with respect to deductions and otherwise as they may consider necessary for the purpose of carrying the restriction into effect.

For these purposes—

(*a*) the expression “contract of assurance” means a contract of assurance or a contract ⁴ similar in character to a contract of assurance, being in either case a contract under which a capital sum is expressed to be payable in the future in return for one or more antecedent payments, and the expression “premium” means any such antecedent payment ;

(*b*) the expression “interest” includes any sum payable in respect of any borrowed money ;

(c) any reference to borrowed money applied to or towards any payment is deemed to include a reference to borrowed money applied directly or indirectly to or towards the replacement of any money so applied ;

(d) any reference to a capital sum payable on death under a contract of assurance is to be construed as a reference to the actual capital sum assured on death, exclusive of any addition which has arisen or may arise from any bonus, share of profits, return of premiums or otherwise, and in the case of a contract under which different capital sums are payable on death in different events, as a reference to the least of those sums (§ 13 1930).

§ 5.—The Preparation of a Statement for Sur-Tax Purposes.

The question as to whether or not a person is liable to payment of sur-tax depends upon his total statutory income of the year.

The following formula will be found useful in the preparation of statements for sur-tax purposes :-

Formula for Sur-Tax purposes.

- (1) Collect together the whole of the statutory income from all sources whatsoever, including wife's income (if any), as required in order to arrive at the total income for Income Tax purposes. Business assessments must be included at the net figure after applying loss claims.

- (2) Deduct annual charges, such as ground rent, mortgage interest, etc., and any interest payable to a banker, or stockholder, or discount house; interest paid to a building society; and the grossed¹ equivalent of any interest on death duties paid by the taxpayer.
- (3) Deduct in respect of any land on which income tax is charged on the annual value, the amount upon which duty has been repaid under Rule 8 of Schedule A, No. 5, in respect of the cost of maintenance, repairs, insurance, management, etc.
- (4) Deduct any sum which the Treasury may allow for expenses in the case of a person in the service of the Crown abroad, which are necessarily incidental to the discharge of the functions of office, and for which allowance has not already been made.
- (5) The result represents the net income fixing whether or not sur-tax is payable.

If adjustments are necessary under §§ 33, 34 or 35—1927, the formula must be modified accordingly.

Working on the basis of the above formula, the following illustration shows the method by which the correct results may be obtained.

Illustration.

Vincent Smith occupies a house of which he holds a lease, the net annual value thereof under Schedule A being £180. There is a ground rent payable of £30 per annum.

He is a partner in the firm of Vincent Smith & Sons, and his proportion of the statutory income of the firm for the year, as agreed with the Inspector of Taxes, amounted to £4,865.

His gross income from investments amounts to £1,460.

He is a director of four companies, and his fees in this capacity amounted to £550.

His wife has a private income from investments amounting to £450 per annum.

His Life Insurance Premiums on his own life amount to £420, and those in respect of his wife amount to £175.

STATEMENT FOR SUR-TAX 1932-33

VINCENT SMITH

INCOME FROM ALL SOURCES		s	d
House Property Assessed, Schedule A, Net Annual Value for 1932-33	180	0	0
Business Profits Assessed, Schedule D, Adjusted Profits for Year ended in 1931-32	1,865	0	0
Gross Dividends Taxed by Deduction, Amounts receivable in 1932-33	1,460	0	0
Director's Fees Assessed, Schedule E, Fees for 1931-32	550	0	0
Wife's Gross Dividends Taxed by Deduction, Amounts receivable in 1932-33	450	0	0
	7,595	0	0
Less Annual Charges—			
Ground Rent payable in 1932-33	30	0	0
Statutory Total Income to Tax	£ 7,475	0	0

NOTE.—Life Insurance Premiums cannot be deducted.

Sur-tax payable —

2,000	Nil
500 — 1/0	£25 0 0
500 = 1/3	31 5 0
1,000 = 2/0	100 0 0
1,000 = 3/0	150 0 0
1,000 = 3/6	175 0 0
1,475 = 4/0	295 0 0
7,475	776 5 0

Add 10% 77 12 6

Total £853 17 6 payable 1st January, 1934.

§ 6.—Sur-Tax on the Income of Married Women.

The income of the wife is deemed to be the income of the husband for sur-tax purposes, and the assessment will be made upon the husband.

If, however, application is made before the 6th July in the year next following the year of assessment, separate assessments will be made in respect of the income of the husband and the income of the wife (§ 42 (9) —1927).

The election will hold good for subsequent years until revoked by similar application (§ 22—1930). The income of the husband and wife is treated as one in arriving at the tax payable, and the latter is divided between husband and wife in proportion to the amounts of their respective incomes (§ 42 (9) (b)—1927).

An assessment may be made direct on a married woman living apart from her husband (*Marion Brooke v. Commissioners of Inland Revenue* (1917), 7 T.C. 261).

A husband cannot be assessed to sur-tax in respect of his wife's pre-nuptial income, since it does not form part of his total statutory income.

Illustration.

A married in August, 1932. His own statutory income for 1932-33 was £1,800. His wife had a statutory income of £5,000, of which £2,100 was in respect of the period April to August (prior to marriage). A's statutory total income for 1932-33 is £1,800 + £2,900 (wife's income) = £4,700

Sur-tax payable . . .

£2,000		Nil.
500 @ 1/0	..	£25 0 0
500 @ 1/3	..	31 5 0
1,000 @ 2/0	..	100 0 0
700 @ 3/0	..	105 0 0
<hr/>		<hr/>
£4,700		261 5 0
	Add 10%	26 2 6
		<hr/>
Total	..	£287 7 6

If they claim separate assessments, then

A. will pay $\frac{1}{2}$ of £287 7s 6d.	£119	1	2
and his wife will pay $\frac{1}{2}$ of £287 7s 6d.	177	6	4
	£287		6

The wife is personally liable on her income prior to marriage, i.e., on £100 @ 1/0 = £5, plus 10% = £5 10s 0d

§ 7.—Sur-Tax on undistributed Income of a Company.

In recent years, owing to the high rates of sur-tax in force, various schemes have been evolved for the legal avoidance of this tax. One of the most favoured was the formation of private trust companies which did not distribute profits as dividend, but accumulated them, making loans to the members, and ultimately winding-up (a new company being formed to carry on with the avoidance of tax).

Sur-tax is not payable on undistributed profits when such are distributed as surplus assets of a company in liquidation (*Commissioners of Inland Revenue v. Burrell* (1924), 9 T.C. 27), but see § 31 (4), 1927, below.

Another favourite mode of avoidance of sur-tax was to capitalise the profits and use them for paying up an issue of debentures which were afterwards redeemed, thus the profits reached the members as capital.

To avoid the loss of revenue entailed by these private companies, powers were conferred upon the Special Commissioners by § 21, Finance Act, 1922, whereby the income of the company may be deemed to be the income of the members, in certain circumstances, and these provisions were extended by the Finance Act, 1927.

The provisions applied in the first place to any company formed after the 5th April, 1914, in which the number of shareholders was not more than fifty, which had not made a public issue of its shares and which was under the control of not more than five persons (§ 21 (6)—1922); but as from the 6th April, 1928, the section applies to ANY COMPANY (within the meaning of the Companies Act, 1929), WHICH IS UNDER THE CONTROL OF NOT MORE THAN FIVE PERSONS, and which is NOT a company SUBSIDIARY TO A COMPANY TO WHICH THE PROVISIONS OF THE SECTION DO NOT APPLY, OR IS NOT A COMPANY IN WHICH THE PUBLIC IS SUBSTANTIALLY INTERESTED (§ 31 (3)—1927).

A subsidiary company is defined as one where, by reason of the beneficial ownership of the shares, the control of the company is in the hands of a company, or of two or more companies, none of which is a company to which these provisions apply.

A company is deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or relatives or nominees of those persons, or where the control is by any other means whatsoever in the hands of those persons. The expression "relative" means a husband or wife, ancestor, or lineal descendant, brother, or sister. Persons in partnership and persons interested in the estate of a deceased person, or property held on trust, are, respectively, deemed to be a single person.

A company is deemed to be one in which the public is substantially interested, if shares of the company (not being shares carrying a fixed rate of dividend) carrying not less than 25% of the voting power have been unconditionally allotted to, or acquired by, and

at the end of the year were beneficially held by the public (excluding a company to which these provisions apply), and such shares have been dealt with on a Stock Exchange and *officially* quoted during the year,

Where the Special Commissioners are satisfied that such a company has not, within a reasonable time after the end of its accounting period, distributed a reasonable part of its income in such a way as to render such income liable to be included in the recipients' income for purposes of sur-tax, the Commissioners may direct that the whole of the company's income for the year be treated as income of the members, and apportioned between them. Sur-tax shall then be assessed and charged on the amount so apportioned, after deducting any amount actually distributed by the company. The income is deemed to be received on the date to which the accounts were made up, unless, on application by the company, the Special Commissioners deem some other date to be just, *e.g.*, to avoid the inclusion of more than one year's income in one year's assessment.

In determining whether a company has distributed a reasonable part of its income, the current requirements of the company, and the necessity or advisability of providing for maintenance and development of the business is to be considered (§ 21 (1)---1922), but the following payments shall be considered as income available for distribution, and not as being applied to current requirements, *viz.*,

- (1) Payments for the acquisition of the company's business, undertaking, or property.
- (2) Repayment of any share or loan capital or debt issued or incurred in payment for the business, undertaking, or property.

- (3) Payments in meeting any obligations in respect of the acquisition of the business, etc.
- (4) Any payments in pursuance of any fictitious or artificial transactions (§ 31 (1)—1927).

It is, therefore a question to be determined by reference to the accounts and all the circumstances surrounding the case as to whether the company has in fact distributed a "reasonable" dividend.

As a result of the decision in *C.I.R. v. Burrell supra*, § 31 (4), 1927, provides that where an order has been made or a resolution passed for the winding-up of a company to which § 21, 1922, applies, the income of the company for the period from the end of the last year or other period for which accounts of the company have been made up to the date of the order or resolution for winding up shall, for the purposes of the said section, be deemed to be income of that period available for distribution to the members of the company, and, as respects that period and the next preceding year or other preceding period or periods ending within that next preceding year for which accounts have been made up, the said section shall apply as if the words "within a reasonable time" in subsection (1) of the said section were omitted therefrom.

Any notice required under the provisions of § 21—1922, to be served upon a company may, where the company is in liquidation, be served upon the liquidator of the company, and the liquidator shall be responsible for doing all matters or things required to be done by or on behalf of the company, and the liquidator shall be responsible for the due payment of any sur-tax payable by or recoverable from the company under the provisions of the said section (§ 31 (5), 1927).

The income, when apportioned to a member, shall be assessed on the member in the name of the company, at the rates appropriate to that member, treating the income so apportioned as being the part of his income attracting the highest rate of sur-tax to which he is liable, and unless the member elects, within 28 days of the notice, to pay, the tax shall be collected from the company. Relief is granted from liability to sur-tax when income so apportioned is subsequently distributed, and where a member, on receipt of such income inadvertently pays upon it he shall be entitled to repayment.

The First Schedule to the Finance Act, 1921, provides that in calculating the actual income of the company from all sources for any year, the income from any source is to be computed in accordance with the provisions of the Income Tax Acts. Thus, a company which owns and occupies its own premises is required to include in its total income the Schedule A value thereof, as part of its income available for distribution, although in fact no tangible income is received.

If the Special Commissioners have examined the accounts of the company and have come to the conclusion that there is a *prima facie* case for assessing the company to sur-tax, they can then do one of two things. They can issue a direction apportioning the income of the company over the members, or they can demand further particulars from the directors. Those further particulars will consist of a statement of the company's income, a copy of the year's accounts, and such other particulars as they may reasonably require; a statement of how the income of the company has been dealt with, and a statement of the names, addresses and particulars

of the shareholdings of each of the members. In that connection it is necessary to furnish them with details which will enable them to arrive at who are the "persons" who control the company. The directors, if they wish to resist assessment, can then make a statutory declaration to the effect that there has been no unreasonableness in withholding profits from distribution.

This statutory declaration, which must be made within 28 days of the receipt of the notice of direction, or demand for further particulars, will state the amount which is regarded as proper to retain in the business, the amount they propose to recommend as dividend, the amount they have distributed as dividends, and the reasons for the retention. It must be sworn before a Commissioner, and it is a document which should be prepared with great care, because it may be that upon the satisfactoriness of this document will depend whether or not the company actually has to pay sur-tax.

On receipt of the statutory declaration, the Special Commissioners decide whether or not they will take further action. If the statutory declaration satisfies them, they will take no further action, but if it does not, they will certify that fact to the Board of Referees, to whom they give the statutory declaration and their certificate that they think there is a case against the company. They must then furnish a copy of the statutory declaration and a copy of their certificate to the Commissioners of Inland Revenue, and within 28 days of the receipt of this certificate the Commissioners of Inland Revenue may submit to the Board of Referees a counter-statement (a copy of which will be supplied to the company).

The Board of Referees must then determine whether there is a *prima facie* case for assessing the company. If they decide there is no case, that finishes the matter, but if they decide there is a *prima facie* case, then the Special Commissioners can apportion the income over the members, and the company may appeal against the apportionment, within 21 days, to the Special Commissioners.

If the Special Commissioners decide against the company, the company can then appeal within 21 days to the Board of Referees. If the decision is against the Inland Revenue, they can appeal within 21 days to the Board of Referees. The statements of the respective arguments will then be prepared, and the appeal heard. The decision of the Board of Referees at this stage on a question of fact is final; on a question of law there is the usual right to appeal to the Courts. The decision to appeal to the Courts must be made and notified within 21 days.

It is important to remember that there is no onus upon the Crown to prove an intention to avoid sur-tax. The very fact that the company has not distributed a reasonable dividend within a reasonable time after the end of its financial year is sufficient to involve a charge by the Special Commissioners upon that company. The procedure, once the Board of Referees have decided that there is a definite liability, is for the Special Commissioners to apportion the income of the company over the members. The income of the company for this purpose must be arrived at by adjusting the accounts in the same way as for income tax purposes, and in the case of certain companies—for example, investment companies and property companies—it is very important to remember to

make claims for management expenses, etc., thus reducing the amount which is available for the shareholders. Due provision is made for annual charges. The whole of the company's profits as so ascertained are then apportioned over the members in accordance with their respective beneficial shareholdings. The Special Commissioners, having distributed the income over the persons who would be entitled to it if it had actually been distributed, will then compute what additional sur-tax would have been paid by each individual if he had had this income.

The company should clearly distinguish those reserves which have suffered sur-tax under these provisions from the reserves which have not suffered sur-tax, since when any sum is distributed on which sur-tax has been levied under these provisions, it will be exempt in the hands of the recipient, although there is no provision in the Act whereby the company can recover from the individual the sur-tax it has had to pay on his behalf; the dividends of all members will thus be reduced *pro rata* by reason of the payment of the sur-tax, irrespective of their respective liabilities.

Section 32, Finance Act, 1927, enables the undistributed income of a company to be followed through intermediate holdings into the hands of the beneficial owners; thus, where a member of a company is itself a company the income of the first company can be apportioned to that "member" company, and in turn apportioned amongst the members of that company. These provisions are sufficiently wide to enable the undistributed income to be followed through any chain of companies until the beneficial owner is reached, each company being

required to furnish lists of its members and their holdings. In each case, however, the company must be one to which the provisions of § 21, Finance Act, 1922, as amended, would apply, *i.e.*, it must come within the definition already stated at the beginning of this section of this Chapter.

In order to enable companies to ascertain within a reasonable time whether or not they are likely to be subjected to the above provisions, any company to which the definition applies may, at any time after the general meeting at which the accounts are adopted, forward a copy of the annual accounts and the directors' report to the Special Commissioners, and the Commissioners may within 28 days of the receipt, request the company to furnish them with further particulars within 28 days or such extended period as they may allow. If, within three months after the receipt of the accounts or further information, as the case may be, the Commissioners do not indicate their intention to take further action, the Commissioners' rights to further action cease. If, however, the Commissioners intimate that they propose to take further action, they must proceed within six months of the date of the intimation (§ 18 - 1928).

The expenses of a SUCCESSFUL appeal against sur-tax will, in practice, be allowed as a deduction in arriving at the company's assessable profits under Schedule D.

Illustration.

The available profits, from the point of view of the above provisions, of a company controlled by A., B. and C., for the year ended 31st March, 1933, were £18,000, made up as follows:—

INCOME TAX.

Profits as adjusted for Schedule D, Case I	£14,995	
Less Wear and Tear allowance ..	495	
		£14,500
Schedule A assessment on premises owned		1,500
Untaxed interest		400
Dividends received (gross)		3,000
		19,400
Less Mortgage Interest Deduction ..	£600 800	
		1,400
		£18,000

The share capital was held as follows —

Shares of £1 each.

A. .. .	30,000
B. .. .	30,000
C. .. .	10,000
D, wife of A. .. .	10,000
E. Uncle of B. .. .	10,000
F., nominee of C. .. .	10,000
	100,000

B. had no control over E.

No dividend was paid, and the Special Commissioners, holding this to be unreasonable in the circumstances, apportioned the profits over the members. A. had other income of £5,000; B other income of £1,800, C. other income of £500, and E. other income of £200.

	A	B	C	E
Other Income	£5,000	£1,800	£500	£200
Proportion applicable to Share Holding (including wife in the case of A and nominee in the case of C.)	(40%) 7,200	(30%) 5,400	(20%) 3,600	(10%) 1,800
	<u>£12,200</u>	<u>£7,200</u>	<u>£4,100</u>	<u>£2,000</u>
Sur-tax liability @ 1/0 plus 10%	£500	£500	£500	Nil
1/3 "	500	500	500	—
2/0 "	1,000	1,000	1,000	—
3/0 "	1,000	1,000	100	—
3/6 "	1,000	1,000	—	—
4/0 "	2,000	1,200	—	—
5/0 "	2,000	—	—	—
5/6 "	2,200	—	—	—

The company's liability is therefore at the highest rates attributable to each member, *viz.*

			£	s.	d.
<i>re A.</i>	..	£1,000 @ 3/6 ..	175	0	0
		2,000 @ 4/0 ..	400	0	0
		2,000 @ 5/0 ..	500	0	0
		2,200 @ 5/6 ..	605	0	0
		<u>£7,200</u>	1,680	0	0
		Add 10%,	168	0	0
				1,848	0 0
<i>re B.</i>	..	£500 @ 1/0 ..	25	0	0
		500 @ 1/3 ..	31	5	0
		1,000 @ 2/0 ..	100	0	0
		1,000 @ 3/0 ..	150	0	0
		1,000 @ 3/6 ..	175	0	0
		1,200 @ 4/0 ..	240	0	0
		<u>£5,200</u>	721	5	0
		Add 10%,	72	2	6
				793	7 6
<i>re C.</i>	..	500 @ 1/0 ..	25	0	0
		500 @ 1/3 ..	31	5	0
		1,000 @ 2/0 ..	100	0	0
		100 @ 3/0 ..	15	0	0
		<u>£2,100</u>	171	5	0
		Add 10%,	17	5	6
				188	7 6
				<u>£2,829</u>	15 0

If and when the profits are ultimately distributed, they are exempted from sur-tax in the hands of the recipients, although there is no provision whereby the company can recoup the sur-tax paid from the individuals in question. The company will simply distribute the balance of profits remaining after debiting the total sur-tax paid, and members not liable to sur-tax thus actually bear part of the charge.

§ 8.—Sur-tax on Income of Infants.

In the case of an infant having an interest in settled property where money is accumulated under the

settlement contingently upon his attaining age, and the minor becomes of age, the whole of the income year by year is to be treated as income for sur-tax, and not only the amounts expended on maintenance, and the minor is assessable to sur-tax thereon (*Commissioners of Inland Revenue v. Countess of Longford*; and *Gascoigne v. Commissioners of Inland Revenue* (1927), 6 A.T.C. 254).

§ 9.—Recovery of Sur-Tax due from beneficiary under discretionary trust.

Where sur-tax is due from any beneficiary to whom or for whose benefit any income or any capital may in the discretion of some other person be paid or applied under a trust, and any sur-tax charged in respect of the income of the beneficiary is not paid before the expiration of six months from the date when it became due and payable, the Special Commissioners may at any time thereafter, so long as the said sur-tax remains unpaid, cause to be served on the trustees of the trust a notice in writing that the said sur-tax remains unpaid.

Where such a notice is served on the trustees of the trust it is the duty of the trustees, as soon as may be, and, if necessary from time to time, to pay the Commissioners of Inland Revenue in or towards satisfaction of the said sur-tax from time to time, remaining unpaid any income or capital which, by virtue of any exercise of the discretion under the trust, the beneficiary may become entitled to receive or to have applied for his benefit.

Any payments made out of income by trustees on account of sur-tax in respect of which such a notice

has been served is deemed for all the purposes of the Income Tax Acts to represent income paid to the beneficiary.

Any sum which the trustees are liable to pay by virtue of these provisions is recoverable from them as a debt due to the Crown.

Service of any such notice may be effected by sending it by post to the person on whom it is to be served by letter addressed to him at his usual or last known place of abode, and, where there are two or more trustees under the trust, the notice is deemed to have been validly served upon the trustees if served upon any one of them, but this does not render a trustee personally liable for anything done by him in good faith and in ignorance of the fact that such a notice has been served (§ 34 -1933).

CHAPTER IX.

Claims for Return of Tax.

§ 1 - SUMMARY OF CLAIMS FOR RETURN OF TAX

- 2 PERSONAL, CHILD, ETC., ALLOWANCES.
- 3 METHOD OF MAKING CLAIM FOR REPAYMENT.
- 4 DOUBLE ASSESSMENT
- 5 INSTANTS AND RETURN OF TAX.
 - (a) Contingent Interest.
 - (b) Absolute Interest
- 6 REVOCABLE TRUSTS
- 7 RETURN OF TAX TO CHARITIES AND OTHER BODIES EXEMPT.
- 8 INTEREST PAID TO BANKS, ETC
- 9 MANAGEMENT EXPENSES, INSURANCE COMPANIES, ETC.

CHAPTER IX.

CLAIMS FOR RETURN OF TAX.

§ 1.—Summary of Claims for Return of Tax.

The Finance Acts, 1926 and 1927, materially altered the bases of assessments in abolishing the average system, and instituted new rules, particularly as to new and discontinued businesses and successions. Since these rules are not retrospective, the rights which existed in 1926-27, and before, are not affected, and in some cases claims can be made over a period to a part of which the present rules apply, and a part to which the superseded rules apply. It is not the purpose of this book to explain the law and practice prior to 1927-28, and accordingly the illustrations given in this chapter show the claims which apply subsequent to 5th April, 1927.

Claims for repayment in respect of Income Tax charged are valid for a period of six years after the expiration of the year of assessment to which the claim relates (§ 30—1923), except where otherwise stated.

In any case where a claim for repayment is authorised by the Income Tax Acts to be made at the end of any year of assessment or within a specified period of less

than a year after the end of any year of assessment, such claim can now be made within a period of one year after the end of the year of assessment (§ 30—1923).

Claims for repayment of Income Tax may be made in the following cases, provided the claimant satisfies the Inland Revenue Authorities that the claim is in order :—

(1) In the event of a person having paid (by deduction or otherwise) Income Tax on an amount exceeding the amount which is correctly payable upon his taxable income as explained in Chapter II.

(2) Where a person, either through ignorance of his rights, or owing to the fact that his income is received less tax, has not obtained an allowance in respect of earned income, old age, personal and similar allowances, or in respect of his life assurance premiums.

(3) Under § 151, in cases of double assessment, *e.g.*, where interest has been paid to a building society under Arrangement “B” or “13 A” without deduction of Income Tax.

(4) Under § 34, where a trading loss has been sustained in the year of assessment. This claim must be made within 12 months of the end of the year of assessment (*see* Chap. VII, § 2).

(5) In cases of charitable institutions and other bodies exempt from tax.

- (6) In cases where interest on short loans paid to bankers, stockbrokers or discount houses, has not been deducted in computing that individual's Income Tax liability, and an equal amount of taxed income can be proved, a return of tax can be claimed on the amount of the interest (§ 36).
- (7) Under Rule 6 of Schedule B, where the actual profits from working a farm are less than the statutory assessment under Schedule B, claim can be made within 12 months of the end of the year of assessment for refund of tax in respect of the difference (*see* Chapter III, § 2).
- (8) Under Rule 8 of Schedule A, No. V,^u as amended by § 25, Finance Act, 1922, a claim for repayment of tax can be made in respect of the 'additional' relief granted for maintenance of property under Schedule A (*see* Chap. III, § 1).
- (9) Under Rules 1—5 of Schedule A, No. V, where the appropriate deductions in respect of land tax, tithes, owners rates, etc., have not been made in arriving at the Net Annual Value, the allowances may be claimed to be made by repayment.
- (10) Under § 204 in Northern Ireland, and by concession in Great Britain, a landlord may reclaim tax paid in respect of rent irrecoverably lost (*see* Chap. III, § 1); the claim must be made within 12 months of the end of the year of assessment.

- (11) Under Rule 4 of Schedule A, No. VII, a claim for repayment can be made in respect of empty property, within 12 months of the end of the year of assessment (*see* Chapter III, § 1).
- (12) Under § 27, Finance Act, 1920, relief is given in respect of income derived from a British Dominion or Possession which has already borne Income Tax in that Dominion or Possession, and in proper cases a refund of tax may be claimed (*see* Chap X).

Various other adjustments are claimable in specific instances, *e.g.*, in respect of new businesses, successions to businesses, etc.; these are dealt with *passim*.

§ 2. —Personal, Child, etc., Allowances.

Every individual taxpayer is entitled, as explained in Chapter II, to certain allowances or deductions in computing the Income Tax payable by him, and if the Income Tax paid by him exceeds the amount which is correctly payable after effect has been given to these allowances or deductions, repayment of the difference can be claimed within six years after the end of the year in respect of which the tax has been paid. The following example can be adapted to suit every such case that can arise.

Illustration.

William Johnson has been assessed to Income Tax under Schedule D for year 1932-33 in the sum of £150, as a grocer. He is

married, has two children, aged 10 and 12, and maintains his invalid sister who has no income His wife has no income, but he has £500 a year gross from taxed dividends.

His Statutory Income is as follows :—

Profits as Grocer, assessed Schedule D ..	£150
Taxed Dividends (Gross)	500
Total Statutory Income	£650

His Assessable Income is as follows :—

Profits as Grocer	£150
Less One-fifth Earned Income Allow- ance	30
	— 120
Taxed Dividends (Gross)	500
Assessable Income	£620

His Taxable Income is as follows :—

Assessable Income	£620
Less Allowances—	
Personal	£150
Two Children	90
Dependent Relative	25
	— 265
Taxable Income	£355

The Income Tax payable upon a Taxable Income of £355 is .

£175 at 2/6 in £	=	£21 17 6
Balance, £180 at 5/- in £	=	45 0 0
Total		£66 17 6

He has already paid Income Tax amounting to £125, this being the amount of tax that was deducted from his dividends, viz., £500 at 5/- in £. He is therefore entitled to be repaid the difference between £125 and £66 17s. 6d., viz., £58 2s. 6d.

The amount of the repayment can also be calculated on another basis, but the result obtained is, of course, the same, thus :—

1/6

The allowances to which he is entitled are—

Earned Income Allowance	..	..	£30
Personal	..	..	150
Two Children	..	..	90
Dependent Relative	..	..	25
Total	..	..	<u>£295</u>

Of these allowances only £150 can be allowed from his untaxed income (*i.e.*, his profits as grocer), leaving £145 to be allowed from his income that has already been taxed in full at the standard rate of 5/- in £.

The difference between his statutory income of £650 and the total of these allowances is £365, and as he is required to pay at 2/6 in the £ only on the first £175 of his income, he is also entitled to be repaid 2/6 in the £ on £175.

The repayment due is therefore :—

£145 @ 5/- in £	..	..	=	£36	5	0
175 @ 2/6 in £	..	..	=	21	17	6
Total	..	..		<u>£58</u>	<u>2</u>	<u>6</u>

NOTE.—If the excess of his statutory income over the total allowances is less than £175 the repayment is restricted accordingly. Suppose the total statutory income were only £400, then the excess over the allowances of £295 would be £105, and the repayment would be :—

£145 @ 5/- in £	..	..	=	£36	5	0
105 @ 2/6 in £	..	..	=	13	2	6
Total	..	..		<u>£49</u>	<u>7</u>	<u>6</u>

If the allowances exceed the total statutory income then the whole of the tax paid is repayable.

No claim for the year 1932-33 (*i.e.*, the year to 5th April, 1933) can be admitted if made after 5th April, 1939.

A further illustration will now be given showing a convenient method of arrangement similar to that frequently adopted in practice.

Illustration.

Jones had the following income for 1932-33 :—

Business Profits	£200
Dividends (net)	600
1933 Rent of House (assessed under Schedule A at £120)	90
Net Annual Value of Residence held on Lease	110
Wife's earned income	60

He paid ground rent of £40 per annum, and mortgage interest of £60 per annum. (These sums are the gross amounts before deducting tax.) He had three children under 16, and paid £100 in Life Assurance Premiums on policies taken out after 22nd June, 1916. The direct assessments had been discharged, and on 5th April, 1933, Jones submitted his repayment claim. The tax repayable is computed as follows :—

		Tax thereon.
Dividends—gross	£800 @ 5/	.. £200 0 0
House let, rent received, being less than N.A.V. . . .	90 @ 5/	.. 22 10 0
House in own occupation ..	110	
Case I, Sch. D assessment on profits	200	
Sch. E assessment on wife	60	
	£1 260	Total tax suffered at source £222 10 0
<i>Less Annual Charges—</i>		
Ground Rent	£40	
Mortgage Interest	60	
	100 @ 5/	.. 25 0 0
Total Statutory Income	£1,160	Tax available for repayment .. £197 10 0
<i>Deduct Allowances—</i>		
Earned Income 1/3th of of £260	£52	
Personal	150	
Additional Personal	45	
Children	130	
	£377	
Taxable Income	£783	

INCOME TAX.

	Brought forward	197 10 0
Chargeable—		
£175 @ 2/6 ..	£21 17 6	
608 @ 5/- ..	152 0 0	
	<hr/>	
	£173 17 6	
Less Life Assurance		
Relief—£100 @ 2/6	12 10 0	
	<hr/>	
Net liability		161 7 6
		<hr/>
Tax repayable		£36 2 6

An alternative arrangement (not recommended to students¹)
is as follows —

Claim—

Personal Allowance	£150
Additional „	45
Children	130

325

Less Untaxed Income—

Business	£200
Wife's Earned ..	60

260

Less Earned Income Allow-
ance

52

House	208
	110

318

£7 @ 5/- 1 15 0

Reduced Rate £175 @ 2/6	21 17 6
Life Assurance 100 @ 2/6	12 10 0

Total claim £36 2 6

Where a person, through ignorance of his rights or inadvertence, or owing to the fact that his income is received less tax, has not obtained an allowance in respect of Life Assurance Premiums legally deductible, he can make a claim for the repayment of tax in

respect of the premiums at any time within six years of the expiration of the year of assessment (*see* Chap. II, § 10).

§ 3.—Method of Making Claim for Repayment.

Where the taxpayer has suffered by deduction at source or otherwise more tax than he is liable to pay for the year, he should write to the Inspector of Taxes notifying him of the facts, in order that a repayment may be made.

If the taxpayer has already made a proper return of his total income claiming his reliefs and allowances, he is not ordinarily required to complete another form. Where no return has been made, however, he will be required to complete a special claim form, giving details of his income, and claiming the allowances to which he may be entitled.

The following notes and instructions, taken from the official pamphlet accompanying the Repayment Claim Form should be observed :

1. When Claim may be made.

The Income Tax year ends on 5th April, but claims for the tax due to be repaid for the year may be made in many cases considerably before 5th April.

Persons whose Income Tax reliefs enable them to reclaim the *whole* of the tax deducted from dividends, etc., may claim repayment as soon as all the income, *taxed at the source*, of the year to 5th April has been received.

Other persons entitled to repayment may claim in respect of the reliefs due to them for the year as soon as they have borne for the year sufficient tax to cover the amount of such reliefs.

If desired, an instalment of the repayment due for the year may be claimed at intervals convenient to the claimant—*see* Note 6.

A person who makes an annual Income Tax Return for the purpose of assessment is not ordinarily required to complete the accompanying form in order to obtain repayment. If in an exceptional case the form reaches such a person, he should return it to the Inspector of Taxes with particulars of the address from which the annual Income Tax Return is made, the nature of any business or employment, and where carried on, and the name and address of employer (if any).

2 Statement of Total Income.

The claimant should fill up Section A of the claim form, setting forth **EVERY** source of his income (including, if he is married, that of his wife—

see Note 4) with the amount derived from each source for the year, whether tax has been paid on it or not, and notwithstanding that the income may have been received "free of tax" or "tax compounded." See Note 10 as to particulars and vouchers required.

3 Bank Interest, etc.

Any Bank Interest, or War Loan or other Interest, whether received or credited, must be included in the statement (see Note 10 as to the amount to be inserted)

Accumulated Interest on National Savings Certificates is not taxable, and should be excluded.

4 Wife's Income.

The income of a married woman living with her husband, or wholly maintained by him must be included in any statement of total income for the purpose of a claim to any relief

If, however, a special application for the purpose of separate relief has been made on the prescribed form, either by the husband or the wife, within six months before 6th July in any Income Tax year, claims for relief for that year may be made by the husband and the wife. In the case of persons marrying during the course of a year of assessment application may be made as regards that year at any time before 6th July in the following year. The total amount of relief given to husband and wife will not exceed that which would have been given if the special application mentioned above had not been made. If such application has been made, it should be so stated on the claim form.

5 Charges on Income.

Particulars should be given in space No. 2 on page 2 of the claim form of all charges on the income, such as ground or head rent, interest on mortgage or loan (whether secured on property, British Government securities, life assurance policy, reversion or otherwise), interest on unsecured loans, annuities, patent royalties, or other annual payments. If there is no such charge, state "none." The tax which the claimant is entitled to deduct on payment of any such ground or head rent, etc., is not repayable to the claimant.)

6. Instalment Claim.

If it is desired to claim an instalment of the repayment for the year (see Note 1), the accompanying form should be used for the purpose, and particulars should be given of every source of income, with the amount of income therefrom for the year, and of tax actually borne thereon to the date of the claim

7. Income on which tax has not been suffered.

Any income on which tax has not been suffered will be regarded as though the tax applicable thereto formed part of the statutory reliefs due, and the balance only of such reliefs will be admissible in arriving at the sum repayable

8. Vouchers.

Vouchers (as in Note 10) should be forwarded with the claim showing income, subjected to tax, sufficient to cover the amount of income on which repayment is claimed and the amount of any charges (see Note 5). Further vouchers may, however, be requested in special circumstances. In the case of any instalment claim, vouchers should be sent in respect of each item of income, subjected to tax, received up to the date of the claim

9. Life Assurance Premium Receipts.

Where repayment is claimed in respect of Life Assurance premiums, the claimant should attach the receipts for the premiums paid in the year(s) of claim, or, if the claim is made before the end of the Income Tax year, for the premiums paid since the last previous claim was made. The receipts will be returned to the claimant after being noted.

10. Particulars required.

In completing Section A on page 2 (of the form) the claimant should furnish particulars of income as set out below; he should also supply vouchers as required by Instruction 8

SOURCE OF INCOME AND PARTICULARS REQUIRED.

VOUCHERS REQUIRED.

Trade, Profession or Employment. State nature thereof, where carried on, and amount of assessment (if any). If an employment, state also the name and address of employer

Houses or Land, including Own Residence. whether belonging to the husband or the wife, or occupied by either rent free as tenant for life under Will or Deed.—State the full postal address, or precise situation, name of occupier, annual rent or value, and who bears the cost of repairs

Collector's receipts for any tax paid in respect of this income where possible.

Occupation of Land. State the situation and extent of the lands, and amount of assessment, if any. If no assessment, state the amount of the rent or annual value (inclusive of title). In the case of lands in Northern Ireland, state the amount of the Poor Rate Valuation, Judicial Rent, Interest in lieu of Rent, or Land Purchase Annuity, whichever is the least

Dividends or Interest on Stocks, Shares, etc. If the counterfoils or certificates are not in the claimant's name alone, state whether the persons are trustees, and whether the claimant is legally entitled to the whole income

Dividend counterfoils or certificates.

Interest on Bank Accounts and Deposits. State name of Bank, and insert the amount of income received or credited during the year preceding the year of claim. If the income first arose subsequently to 6th April in the year preceding the year of claim insert the amount received or credited during the year of claim.

Collector's receipt for any tax paid.

Interest on Mortgage, Deposit, Loan or Note of Hand.—State amount of loan, rate per cent., and security

Annuity.—Give particulars of the property or investments out of which paid. If paid by a company, give the full name of the company

If tax deducted, certificate of deduction of tax, signed by payer. Forms of certificate (R 185) supplied on application

Share of Trust Estate.—State the name of the trust, the name and address of the trustee and, if possible the fractional share to which the claimant is entitled; and enter the amount of the trust income in the year of claim in respect of that share

Certificate by Trustee. Forms of certificate (R 185E) supplied on application

- Dividends on British Government Securities,** held in the form of **Bearer or Registered Coupon Bonds.**—State the amount of income of the year of claim
- Certificate of Bank (or Post Office) cashing the coupons, or of Bank of England if cashed personally.
- Dividends on 4% War Loan or 4% National War Bonds (Tax Compounded).**—State the amount of income of the year of claim
- No voucher required
- Dividends or Interest on British Government or other Securities Registered or Inscribed in the Books of the Bank of England (or Ireland) or of the Post Office, and Government Annuities** —
- (I) If Tax was deducted, state the amount of income of the year of claim
- In the case of (I), certificate of deduction of tax issued by Bank of England (or Ireland), Post Office, or National Debt Commissioners.
- (II) If Tax was not deducted, state the amount of income of the year preceding the year of claim. If the income first arose subsequently to 6th April in the year preceding the year of claim, state the amount of income of the year of claim
- In the case of (II), Collector's receipt for any tax paid.
- Payments received through Supreme Court Pay Office.**—(I) As regards payments made before 1st April, 1925, state the amount of income of the year of claim, with dates due, the correct title of the **Cause or Matter**, and the title of the account (if any) in the Supreme Court Pay Office books, and amount of stock and its full description
- In the case of (I) no voucher required
- (II) As regards payments made on or after 1st April, 1925, state the amount of income of the year of claim
- In the case of (II), counterfoil issued by the Supreme Court Pay Office
- Pensions, Income arising from sources Abroad,** and any income not included under other heads. State the nature of the income, the name and address of the person by whom it is paid, and whether it is taxed before receipt. Wounds, disablement and disability pensions granted on account of military, etc., service, and allowances in respect of children granted to widows of members of the Forces, are not taxable and should not be entered
- It subjected to tax, Collector's receipt, or certificate of tax paid or suffered
- Illustration.**
- M. White submits the following particulars of his income from all sources for the year 1932-33 :—
- He owns and works a farm which is assessed under Schedule A at £175 (net). The farm does not include a farmhouse or any cottages, the tithe and land tax have been redeemed.
- He is the holder of £400 2½ per cent. Consols.
- He is the proprietor of a cornchandler's business, the profits of which, based on the preceding year, which have been agreed with the Inspector of Taxes, amount to £500. The statutory profit of the business, however, includes interest on loan £35.

He is a director of the Shire Implements Co., Ltd., his fees in that capacity being 25 guineas per annum.

He owns three cottages from which he receives £82 per annum, the gross annual value under Schedule A being £73. The rents are collected by an agent, whose charges amount to £1 5s. 0d., whilst repairs cost £2

He owns the lease of the shop property in which his business is carried on assessed under Schedule A at £40 net, the ground rent thereon being £10 per annum.

His wife holds shares in the Improved Industrial Dwellings, Ltd., from which she received, free of tax, dividends amounting to £37 10s. 0d.

There is a mortgage on the farm of £1,200, upon which interest at the rate of 6 per cent. per annum is payable.

He is insured with the London Branch of the New York Life Insurance Society for £1,500, the annual premium being £100. His wife is also insured to the extent of £1,000 in the Equitable Life Insurance Society, the premium being £22 per annum.

He has three children aged 15, 12 and 9 respectively, none of whom has any income.

M. WHITE.

STATUTORY INCOME —

Earned—

Farm Occupation (Schedule B) ✓
Cornchandler (Schedule D)
Director (Schedule E)

	£	s	d
Farm Occupation (Schedule B)	200		
Cornchandler (Schedule D)	500		
Director (Schedule E)	26		
		726	0

Unearned—

Farm Property (Schedule A) net
Cottage do do
Shop do do
Consols (Taxed by deduction)
Wife's Dividends (Taxed by deduction)

Farm Property (Schedule A) net	175		
Cottage do do	55		
Shop do do	40		
Consols (Taxed by deduction)	10		
Wife's Dividends (Taxed by deduction)	50		
		330	0

Less Charges—

Interest on Loan
Ground Rent
Mortgage Interest

Interest on Loan	35		
Ground Rent	10		
Mortgage Interest	72		
		117	0

STATUTORY INCOME

1,030 0

Earned Income Allowance— One-fifth of £726

145 0

ASSESSABLE INCOME

£794 0

Deduct Allowances —

Personal
Three Children

Personal	£150		
Three Children	130		
		280	0

TAXABLE INCOME

£514 0

TOTAL TAX PAYABLE —

£175 @ 2 6 in £
330 @ 5. in £

£175 @ 2 6 in £	21	1
330 @ 5. in £	84	1
	105	1

Less Life Assurance Allowance £122 at 2 6 in £

15

Amount of Tax to be borne

91

Add Tax deducted from Charges £117 at 5. in the £

20

Amount to be accounted for to the Inland Revenue Authorities

120 1

He has already paid by deduction from dividends— £60 @ 5. in £

15

So that

£105 1

falls to be paid by him on direct assessments under Schedules A, B, D and E.

These assessments will be made as follows :—

M. WHITE (*continued*).

SCHEDULE D —		£	£ s. d
Gross Assessment	.. .. .	500	
Less Earned Income Allowance	.. .. . £100		
Personal do	.. .. . 150		
Children do	.. .. . 130		
		<u>380</u>	
		£120	
Charged at 2/6 in £		15	
Less Life Assurance Allowance (part)		<u>15</u>	
			Nil
SCHEDULE B —			
Gross Assessment		200	
Less Earned Income Allowance		<u>10</u>	
✓		£190	
Charged—			
255 at 2/6	£6 17 6		
105 at 5/-	26 5 0		
	<u>33 2 6</u>		
Less Life Assurance Allowance (Balance)		<u>5 0</u>	
			32 17 6
SCHEDULE E —			
Gross Assessment		26	
Less Earned Income Allowance		<u>5</u>	
Charged @ 5/- in £			
SCHEDULE A —			
Farm Property			
Charged at 5/-		43 15 0	
Cottage Property charged £55 at 5/-		13 15 0	
Shop Property do £10 at 5/-		<u>10 0 0</u>	
		£105 12 6	

Notes to Illustration.

- (1) In the case of farm property, subject to the special provisions contained in Rules 8 and 9 of Schedule A, No. V, a deduction of one-eighth only is allowed off the gross annual value of the property for repairs. In this case the net assessment is given, and consequently, to ascertain the gross annual value, one-seventh of the net assessment must be added thereto. (One-seventh of the net assessment is equal to one-eighth of the gross annual value.)
- ✓(2) As M. White is the owner of the farm, the net annual value thereof forms part of his statutory income.
- (3) As M. White is the occupier of the farm, he will be assessed under Schedule B in respect of the profits arising from the occupation of the farm. Such profits are estimated at the gross annual value of the property, i.e., £200.

- (4) Directors' fees are assessable under Schedule E, on the directors personally.
- ✓ (5) In the case of house and cottage property, a statutory deduction from the gross annual value is allowed for repairs, and Income Tax is chargeable only on the net assessment. This deduction, subject to the special provisions contained in Rules 8 and 9 of Schedule A, No. V, has to include all expenses in connection with the property: consequently agent's fees and repairs cannot further be taken into consideration. Since the gross annual value of the three cottages is £73, each is under £40, and the deduction for repairs, etc., is one-fourth.
- (6) The wife's income consists of dividends received free of tax. The statutory income, however, is not the amount received, but the amount received plus the tax paid by the company, and the rate of tax being 5/ in the £ the statutory income amounts to £50, viz., £37 10s. 0d. $\times \frac{5}{4}$.
- (7) The allowance in respect of each life assurance premium is limited to 7% of the sum assured, and the total life insurance premiums is limited to one-sixth of the statutory income from all sources. As the premiums paid do not exceed the maximum limit, the whole of the payments is allowable.
- (9) The tax deducted from charges must in all cases be kept in charge to tax at the Standard Rate whatever is the income of the person paying such charges. It is for that reason that the charges are deducted in arriving at the total statutory income, and then brought in again in terms of tax after the computation of the tax to be borne.

§ 4.—Double Assessment.

Relief can be claimed under § 151, in any case of double assessment, within six years after the end of the year in respect of which such claim arises.

Instances of double assessment may easily arise, e.g. :—

- (1) Where a person, having paid Schedule A tax on his own business premises, omits to charge

- against his business profits for Income Tax Schedule D purposes the net Schedule A value of the property.
- (2) Where a person, having credited his Profit and Loss Account with taxed income on investments, omits to deduct that income for Income Tax Schedule D purposes.
 - (3) Where a person owns property on which there is a mortgage with a building society, and pays the mortgage interest in full without any deduction for tax (under Arrangement "B" or "13 A" between the building society and the Inland Revenue Authorities—see Chap. XI, § 16), he should not be assessed in respect of such interest; if he is assessed, however, it must be allowed as a double assessment, and the tax repaid by the Board of Inland Revenue.

An important illustration of double assessment is afforded by the cases of *London County Council v. Attorney-General* (1901), A.C. 26), and *Attorney-General v. London County Council* (1907), A.C. 131). In the former of these cases the London County Council had paid a large sum by way of interest on stocks and loans during the fiscal year 1897-8, and during the same year had received taxed rents of property forming part of the assets of the fund on which the interest was chargeable. By Rule 21 of the General Rules applicable to all Schedules, the tax on interest, etc., paid must be accounted for to the Inland Revenue Authorities, unless such interest was payable out of profits or gains brought into charge to tax; and on the strength of this the Crown assessed the Council without allowing any set-off in respect of the taxed rents.

The London County Council lost the case in the lower Courts, but it ultimately reached the House of Lords, where it was finally decided that the Council was entitled to set off the tax deducted from rents against the tax retained on interest paid, and only to account to the Crown for the difference.

Lord MacNaghten pointed out that there is no essential difference between the Schedule A and Schedule D taxes, and that to read the Act as imposing a double duty would be contrary to the whole scope of Income Tax legislation.

In the second case the London County Council endeavoured to get the same principle applied to the Schedule A tax paid on property in its own occupation, such property forming part of the assets of the fund on which the interest was chargeable. The Council was successful in the lower Courts, but on the case being carried to the House of Lords it was decided in favour of the Crown, on the grounds that the property in question brought in no profits, and no interest could be regarded as being paid out of profits which did not exist; and the Council is therefore not entitled to set-off tax paid on property in its own occupation against the tax deducted from interest. This decision is based solely upon a strict legal interpretation of Rule 21 of the General Rules applicable to all Schedules, and is entirely devoid of equity. Its application is restricted in practice to the assessment of corporations.



5.—Infants and Return of Tax.

Every person acting in any character on behalf of any incapacitated person who cannot be personally

against his business profits for Income Tax Schedule D purposes the net Schedule A value of the property.

- (2) Where a person, having credited his Profit and Loss Account with taxed income on investments, omits to deduct that income for Income Tax Schedule D purposes.
- (3) Where a person owns property on which there is a mortgage with a building society, and pays the mortgage interest in full without any deduction for tax (under Arrangement "B" or "13 A" between the building society and the Inland Revenue Authorities—see Chap. XI, § 16), he should not be assessed in respect of such interest; if he is assessed, however, it must be allowed as a double assessment, and the tax repaid by the Board of Inland Revenue.

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Lord MacNaghten pointed out that there is no essential difference between the Schedule A and Schedule D taxes, and that to read the Act as imposing a double duty would be contrary to the whole scope of Income Tax legislation.

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15.—Infants and Return of Tax.

Every person acting in any character on behalf of any incapacitated person who cannot be personally

charged under the Acts is required to make such returns of that incapacitated person's income as may be necessary (§ 101). (The trustee, guardian, etc., is assessable to tax in the amount in which the incapacitated person should be assessed) (Rules 4 and 13, General Rules). (An infant is an incapacitated person for this purpose, but there is nothing in the Acts to prevent an infant from being charged in his own name where his property or source of income is under his own control (*R. v. Commissioners of Taxes, ex parte Hurley* (1916), 7 T.C. 49), and in that case he could himself make any claims to which he might be entitled, otherwise the person having control of the property, etc., should make the claim.

(a) Contingent Interest.

If an infant's interest in property is (under a will or settlement) CONTINGENT ON HIS REACHING A CERTAIN AGE LIMIT (say twenty-one years), OR MARRYING, and the income from the property has to be accumulated in the meanwhile, the trustee cannot claim any return of tax in respect of such income, except where, and to the extent that, it has been expended on the education and maintenance of the infant.

The reason for this is that the property, in the event of the infant's death before the happening of the contingency, would pass to other persons, so that the income arising during the infant's life would never, in fact, belong to the infant.

Where the infant's interest in the property is contingent, but (a portion of the income is properly applied to the maintenance or education of such infant, the trustee may claim year by year for repayment of tax in respect of the portion of the income so expended)

For purposes of this claim, the amount expended is treated as income received less tax, and the gross amount so obtained is then treated as the statutory income of the infant.

A claim for return of tax in respect of the WHOLE CONTINGENT PERIOD can also be made within six years, (§ 30—1923) of the date after which the interest has become absolute, a deduction being made for any relief received during the contingent period.

The relevant provisions are as follows :—

Where, in pursuance of the provisions of any will or settlement, any income arising from any fund is accumulated for the benefit of any person contingently on his attaining some specified age or marrying, and the aggregate amount in any year of assessment of that income and the income from any other fund subject to the like trusts for accumulation and of the total income of that person from all sources (hereinafter referred to as “the aggregate yearly income”) is of such an amount only as would entitle an individual either to total exemption from tax or to relief from tax, that person shall, on making a claim for the purpose within six years after the end of the year of assessment in which the contingency happens, be entitled, on proof of the claim in manner prescribed by this Act, to have repaid to him on account of the tax which has been paid in respect of the income during the period of accumulation a sum equal to the aggregate amount of relief to which he would have been entitled if his total income from all sources for each of the several years of the said period had been equal to the aggregate yearly income for that year; but in calculating that sum a deduction shall be made in respect of any relief already received (§ 25).

Any repayment obtained under the above provisions by the beneficiary reaching the age of 21 is a personal benefit of the claimant, and he is entitled to the whole of it as income (*Fulford v. Hyslop* (1929), 8 A.T.C. 588).

In *Dale v. Mitcalfe* ((1927), 13 T.C. 41), it was held that the beneficiary was entitled to claim under § 25, although the interest in the accumulations was that of a life tenant only.

Where income is to be accumulated for a period (e.g., twenty years from the date of the testator's death) and the capital and accumulations are then to be divided between the surviving children, the benefit of § 25 cannot be claimed, since the contingency is not the attainment of a specified age or prior marriage (*White v. Whitcher* (1927), 13 T.C. 202).

For the purposes of a repayment claim the income of a beneficiary under a trust is the net amount received (after deduction of the management expenses of the trust) brought up to gross by the addition of the appropriate Income Tax on such gross equivalent (*Murray v. C.I.R.* (1926), 11 T.C. 133; *MacFarlane v. C.I.R.* (1929), 14 T.C. 532).

Illustration.

X. died on 1st April, 1926, leaving the residue of his estate to accumulate for the benefit of A. contingently on A.'s attaining the age of 21, or marrying under that age. A. came of age on 15th May, 1933, having been maintained and educated out of the income. A. had no other income.

Year ending 5th April	Net Income of the Estate	Amounts applied in maintenance, etc
1927 ..	£640	£96
1928 ..	640	180
1929 ..	800	200
1930 ..	800	200
1931 ..	775	217
1932 ..	750	360
1933 ..	900	465

CLAIMS FOR RETURN OF TAX.

1894
Yearly claims—

	1926-27	1927-28.	1928-29	1929-30.	1930-31.	1931-32.	1932-33
Gross Maintenance	£120	£225	£250	£250	£280	£480	£620
Less Personal Allowance	135	135	135	155	155	100	100
Taxable Income ..	Nil	£90	£115	£115	£145	£380	£520
Tax payable @ 2/0	Nil	£9 0 0	£11 10 0	£11 10 0	£14 10 0	£175 @ 2/6 21 17 6 (£205 @ 5/0 51 5 0)	£175 @ 2/6 21 17 6 (£345 @ 5/0 86 5 0)
Less Tax deducted from Maintenance ..	24 0 0	45 0 0	50 0 0	50 0 0	63 0 0	120 0 0	155 0 0
Reclaimed ..	£24 0 0	£36 0 0	£35 10 0	£38 10 0	£45 10 0	£46 17 6	£46 17 6

Claim on Coming of Age—

Gross Income of Estate	£800 0 0	£800 0 0	£1,000 0 0	£1,000 0 0	£1,000 0 0	£1,000 0 0	£1,200 0 0
Less Personal Allowance	135 0 0	135 0 0	135 0 0	135 0 0	135 0 0	100 0 0	100 0 0
	£665 0 0	£665 0 0	£865 0 0	£865 0 0	£865 0 0	£900 0 0	£1,100 0 0

Chargeable—£225 Reduced Rate	(2/0) 22 10 0	22 10 0	22 10 0	22 10 0	£230 @ 2 0 25 0 0	£175 @ 2 0 21 17 6	£175 @ 2 0 21 17 6
Standard Rate	55 0 0	55 0 0	55 0 0	55 0 0	138 7 6	181 5 0	231 5 0
Less Tax on Gross Income	110 10 0	110 10 0	130 10 0	150 10 0	163 7 6	203 2 6	253 2 6
Less Yearly Claim	40 10 0	40 10 0	49 10 0	49 10 0	55 0 0	46 17 6	46 17 6
Now Refunded	£25 10 0	£13 10 0	£11 0 0	£11 0 0	£13 2 6	Nil	Nil

The claim may be computed as follows—

	Yearly.	Reduced Rate	Total
	Personal Allowance	Reduced Rate	Total.
1926-27	£120 @ 4/0 24 0 0	£ 24 0 0	£ 24 0 0
1927-28	£135 @ 4/0 27 0 0	£ 27 0 0	£ 27 0 0
1928-29	£115 @ 2/0 11 10 0	£ 11 10 0	£ 11 10 0
1929-30	£115 @ 2/0 11 10 0	£ 11 10 0	£ 11 10 0
1930-31	£145 @ 2/6 30 7 6	£ 30 7 6	£ 30 7 6
1931-32	£100 @ 5/0 25 0 0	£ 25 0 0	£ 25 0 0

(b) Absolute Interest.

Where the infant's interest in the property is ABSOLUTE, the trustee may claim repayment of tax in the ordinary way on behalf of such infant in respect of the allowances applicable to the gross income from the property each year, irrespective of the amounts expended on maintenance. If, however, the trustee fails to make the claim, the infant, on attaining his or her majority, can only claim a return of tax in respect of the last six years (§ 30—1923).

A purchase of shares by a father, registered in the name of an infant child, has been held to be an effective donation of the shares, so as to entitle repayments of Income Tax to be claimed (*C.I.R. v. Wilson*, (1928), 13 T.C. 789).

§ 6.—Revocable Trusts.

Owing to the heavy rates of taxation imposed during and since the War of 1914-1918, every avenue of escape from the incidence of taxation has been explored by taxpayers and their advisers. Steps have been taken from time to time by Parliament to prevent or mitigate the loss to the revenue which arose through taxpayers finding means of avoiding taxation.

A popular method was temporarily to make over part of the income to dependents and children, and in section 20, Finance Act, 1922, legislation on this point was introduced to make inoperative some of the means of escape thus evolved.

The provisions of that section cover three different classes of cases. In view of its involved provisions, the section is given in full, followed by a concise explanation.

20.—(1) ANY INCOME—

(a) OF WHICH ANY PERSON IS ABLE, OR HAS, AT ANY TIME SINCE THE FIFTH DAY OF APRIL, NINETEEN HUNDRED AND TWENTY-TWO, BEEN ABLE, WITHOUT THE CONSENT OF ANY OTHER PERSON BY MEANS OF THE EXERCISE OF ANY POWER OF APPOINTMENT, POWER OF REVOCATION OR OTHERWISE HOWSOEVER BY VIRTUE OR IN CONSEQUENCE OF A DISPOSITION MADE DIRECTLY OR INDIRECTLY BY HIMSELF, TO OBTAIN FOR HIMSELF THE BENEFICIAL ENJOYMENT; OR

(b) WHICH BY VIRTUE OR IN CONSEQUENCE OF ANY DISPOSITION MADE, DIRECTLY OR INDIRECTLY, BY ANY PERSON AFTER THE FIRST DAY OF MAY, NINETEEN HUNDRED AND TWENTY-TWO (OTHER THAN A DISPOSITION MADE FOR VALUABLE AND SUFFICIENT CONSIDERATION), IS PAYABLE TO OR APPLICABLE FOR THE BENEFIT OF ANY OTHER PERSON FOR A PERIOD WHICH CANNOT EXCEED SIX YEARS; OR

(c) WHICH BY VIRTUE OR IN CONSEQUENCE OF ANY DISPOSITION MADE, DIRECTLY OR INDIRECTLY, BY ANY PERSON AFTER THE FIFTH DAY OF APRIL, NINETEEN HUNDRED AND FOURTEEN, IS PAYABLE TO OR APPLICABLE FOR THE BENEFIT OF A CHILD OF THAT PERSON FOR SOME PERIOD LESS THAN THE LIFE OF THE CHILD,

shall, subject to the provisions of this section, but in cases under the above paragraph (c) only if and so long as the child is an infant and unmarried, be deemed for the purposes of the enactments relating to Income Tax (including sur-tax) to be the income of the person who is or was able to obtain the beneficial enjoyment thereof, or of the person, if living, by whom the disposition was made, as the case may be, and not to be for those purposes the income of any other person.

Provided that in cases under the above paragraph (a)—

(i) where any such power as aforesaid can be exercised by a person with the consent of the wife or the husband of that person, the power shall for the purposes of the said paragraph, be deemed to be exercisable without the consent of another person, except where the husband and wife are living apart either by agreement or under an order of a court of competent jurisdiction; and

(ii) where any such power as aforesaid is exercisable by the wife or the husband of the person who made the disposition, the power shall, for the purposes of the said paragraph, be deemed to be exercisable by the person who made the disposition.

Provided also that—

(i) the above paragraph (c) shall not apply as regards any income which is derived from capital which, at the end of

the period during which that income is payable to or applicable for the benefit of the child, is required by the disposition to be held on trust absolutely for, or to be transferred to, the child, or any income which is payable to or applicable for the benefit of a child during the whole period of the life of the person by whom the disposition was made ; and

(ii) for the purposes of the said paragraph (c) income shall not be deemed to be payable to or applicable for the benefit of a child for some period less than its life by reason only that the disposition contains a provision for the payment to some other person of the income in the event of the bankruptcy of the child, or of an assignment thereof, or a charge thereon being executed by the child.

(2) Where by virtue of paragraph (b) or paragraph (c) of subsection (1) of this section any Income Tax or sur-tax becomes chargeable on and is paid by the person by whom the disposition was made, that person shall be entitled to recover from any trustee or other person to whom the income is payable by virtue or in consequence of the disposition the amount of the tax so paid, and for that purpose to require the Commissioners concerned to furnish to him a certificate specifying the amount of the income in respect of which he has so paid tax and the amount of the tax so paid, and any certificate so furnished shall be conclusive evidence of the facts appearing thereby.

(3) Where any person obtains in respect of any allowance or relief a repayment of Income Tax in excess of the amount of the repayment to which he would but for the provisions of paragraph (b) or paragraph (c) of subsection (1) of this section have been entitled, an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue or in consequence of the disposition, or where there are two or more such persons shall be apportioned among those persons as the case may require.

If any question arises as to the amount of any payment or as to any apportionment to be made under this subsection, that question shall be decided by the General Commissioners whose decision thereon shall be final.

(4) Any income, which is deemed by virtue of this section to be the income of any person, shall be deemed to be the highest part of this income.

(5) In this section, unless the context otherwise requires—

The expression “child” includes step-child or illegitimate child ;

The expression “disposition” includes any trust, covenant, agreement or arrangement.

1/ From the section as above, it will be seen that, to prevent the income being treated as his own, the taxpayer who has made the disposition must—

- (a) either be unable to obtain the beneficial enjoyment of the income without the consent of any other person. (In this case, the husband or wife of a taxpayer is not considered to be another person unless they are living apart by agreement or under an order of a Court.)
- (b) or have covenanted to pay over the income to the donee for a period which is capable of exceeding six years (whether or not it does turn out to exceed six years).
- (c) or, if the income is applicable for a child of the settlor, have covenanted so that the capital will pass to the child at the end of the period for which the income is payable to or for the benefit of the child, or so that the income is payable to the child for its whole life, or for the whole life of the settlor.

If a child is of age or married, the restrictions in (c) do not apply, and the provisions of (a) and/or (b) must be observed, *e.g.*, though the restrictions in (c) are inapplicable, the covenant may be inoperative to pass the Income Tax liability on by reason of its offending against (b).

Class (c) is not offended merely because the disposition contains a provision for the payment to some other person of the income in the event of the bankruptcy of the child, or of an assignment or charge executed by the child.

If the covenant does not offend the provisions, the disporor may deduct Income Tax on paying over the income, and treat the gross amount as an annual charge. The recipient treats it as taxed income, against which he may claim the reliefs to which he is entitled.

Illustrations.

(a) A father entered into a bond to pay an annuity to a child of full age for three years. This offends (b), the father is chargeable on his whole income without any deduction for the annuity, and the annuity is not treated as income of the child (*Gillies v. C.I.R.* (1929), S.C. 131)

(b) A father purchased shares in a company in the name of his infant child, as a gift to that child, in whose name the shares were registered. This does not offend (c), and is effective (*C.I.R. v. Wilson* (1928), 13 T.C. 789). The father, as trustee for the child, can spend the dividends on the child's maintenance, and reclaim income tax on behalf of the child in respect of the personal allowance and reduced rate relief.¹⁶

(c) A covenant is entered into whereby a taxpayer binds himself to pay a sum of £200 per annum to a hospital, or other charity for his life or seven years, whichever shall be the longer. The taxpayer pays this sum less tax, and deducts the gross £200 in arriving at his total income for sur-tax purposes. The hospital or charity, being exempt from tax, recovers from the Inland Revenue the Income Tax deducted.

An annuity received by trustees on behalf of a minor under a covenant by the settlor containing a power of revocation which could be exercised by the settlor with the consent of any one of certain named persons does not make the annuity income of the settlor within Finance Act, 1922, § 20 (1) (c) (*Watson (Trustees of) v. Wiggins* (1933), 49 T.L.R. 326).

1)

§ 7.—Return of Tax to Charities and other Bodies exempt.

Under § 37 charitable institutions are exempt from the payment of Income Tax upon income from rents received (Schedule A); interest, annuities and dividends (Schedule C); and yearly interest and other annual payments forming part of their income (Schedule D), provided that the rents and interest, which would otherwise have been taxable, are properly applied to charitable purposes.

Property owned and occupied by a charity is exempt from Schedule A, except such part as is in the use and enjoyment of a person whose total statutory income amounts to as much as £150 per annum, and except as regards any rent or other annual payment made by the charity in respect of such property (§ 30—1921).

Lands occupied by a charity are exempt from Schedule B if the work in connection with the husbandry is mainly carried on by beneficiaries of the charity, and the profits, if any, arising therefrom are applied solely to the purposes of the charity. Such part, however, as is in the use and enjoyment of a person whose total statutory income amounts to as much as £150 per annum is chargeable (§ 30—1921).

“ ‘Charity’ in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes (beneficial to the community, not falling under any of the preceding heads ” (*Commissioners for Special Purposes of the Income Tax v. Pemsel* (1891), A.C. 531, *per Lord MacNaghten*). Whether or not any given organisation is a “charity” is a question to be

determined on the exact circumstances of the case. Where a trust deed contains purposes other than charitable ones, it is not a trust for charitable purposes only (*Rex v. Special Commissioners, ex parte Rank's Trustees* (1922), 8 T.C. 286).

Profits from a trade carried on by a charity are exempt from tax under Schedule D if the profits are applied solely to the purposes of the charity, and either the trade is exercised in the course of the actual carrying out of a primary object of the charity or the work in connection with the trade is mainly carried on by beneficiaries of the charity (§ 30—1921 and § 24—1927).

A company limited by guarantee, incorporated to carry on a school, whose whole income is by its constitution applied in furtherance of its objects and which was regarded as a charity was held to be assessable under Schedule D on the surplus of fees over current expenses, as being profits or gains arising from carrying on a trade in respect of which no exemption was granted by § 37—1918, or § 30—1921 (*Brighton College v. Marriott* (1925), 10 T.C. 235). It should be noted that the *Brighton College* case was before the introduction of § 24—1927, and there is some doubt as to how far it still applies.

In a case where a charity was entitled to a yearly balance of the profits of a business on which the trustees were assessed under Case I, Schedule D, it was held that this fell within § 37 of the Income Tax Act, 1918, as an annual payment, and the charity was entitled to repayment of Income Tax thereon, the actual receipt being treated as a net figure (*Rex v. Special Commissioners; ex parte Shaftesbury Homes, etc.* (1922), 8 T.C. 367).

In cases where a charity is entitled to the residuary estate of a testator, and the whole or part of such residue is not paid until after one year of the death of the testator, that part of the income which accrued after the expiration of the said year can be treated as income of the charity for income tax purposes (§ 30—1922).

As to Schedule A tax, hospitals, almshouses, university colleges and halls, and scientific institutions, are exempt, as well as charitable institutions. In practice churches are also exempted. The *bonâ fides* in each case must, however, be satisfactorily proved. Whether or not a school is entitled to exemption as a public school, under Schedule A, is a question of evidence; the possibility of profit arising to an individual in the course of carrying on a school does not of necessity prevent the school having the character of a public school (*Girl's Public Day School Trust v. Ereaux* (1930), 99 L.J.K.B. 643).

Under the Charitable Trusts Amendment Act, 1855, § 28, provision is made for payment of dividends to charities assessable under Schedule C without deduction of tax; but in other cases repayment of tax must be claimed from the Special Commissioners.

Similar provisions as to exemption from tax under Schedules A, C and D, apply to a friendly society, which, if unregistered, has not an income in excess of £160 per annum or which, if registered, is precluded by Act of Parliament or by its rules from assuring to any person a sum exceeding £300 by way of gross sum, or £52 a year by way of annuity. A trade union enjoys a similar exemption to a registered friendly society in respect of interest and dividends applied solely for the purpose of provident benefits (§ 39).

) Savings banks certified under the Trustee Savings Banks Act, 1863, are exempt in respect of their interest and dividends arising from investments with the National Debt Commissioners. The exemption also extends to all income of savings banks which is applied in the payment or credit of interest to any depositor. In any case, however, where the interest paid or credited to any depositor exceeds £15 (§ 24—1924), the bank or branch concerned must make a return to the Inspector of Taxes for the district in which it is situated of the name and address of each such depositor, otherwise it will not obtain the relief to which it is entitled by this section. Any such return must be made before the 1st May in the year following that in respect of which exemption is claimed (§ 39).

National Health Insurance Societies and Committees are exempt in respect of the income from their funds or the investment thereof (§ 39 (5)).

Profits or gains arising to an agricultural society—being a society or institution established for the purpose of promoting the interests of agriculture, horticulture, live stock breeding, or forestry—from an exhibition or show held for the purposes of the society, are exempt from Income Tax, if applied solely to the purposes of the society (§ 23—1924).

Co-operative and similar societies.

Prior to 1933-34, a society registered under the Industrial and Provident Societies Act, 1893 (including a co-operative society), was exempt under Schedules C and D, unless it sold to non-members and the number of its shares was limited by either its rules or its practice (§ 39 (4)). Although co-operative societies usually sell to non-members,

owing to practical difficulties as the law then stood, profits from such transactions were not assessed.

For 1933-34 onwards, § 39 (4) is repealed, and the following provisions take its place :—

Charge of tax on mutual profits.

For the purposes of the following provisions the expression “company or society” means any incorporated company or society whether incorporated in the United Kingdom or elsewhere, and the expression “registered society” means a society registered under the Industrial and Provident Societies Acts, 1893 to 1928, or under the enactments in force in Northern Ireland known as the Industrial and Provident Societies Acts (Northern Ireland), 1893 to 1929.

In the application to any company or society of any provision or rule relating to profits or gains chargeable under Case I of Schedule D (which relates to trades) or under Rule 4 of the Rules applicable to Case III of Schedule D (which relates to the profits of certain cattle dealers and milk dealers) any reference to profits or gains is deemed to include a reference to a profit or surplus arising from transactions of the company or society with its members which would be included in profits or gains for the purposes of that provision or rule if those transactions were transactions with non-members, and the profit or surplus is to be determined on the same principles as those on which profits or gains arising from transactions with non-members would be so determined.

There is no exemption under Schedules C and D.

In computing the profits or gains of a company or society which include any income which is chargeable

to tax by virtue of the above provisions, there are to be deducted as expenses any sums which—

- (a) represent a discount, rebate, dividend, or bonus granted by the company or society to members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the company or society, being transactions which are taken into account in the said computation; and
- (b) are calculated by reference to the said amounts or to the magnitude of the said transactions and not by reference to the amount of any share or interest in the capital of the company or society.

A registered society whose business consists mainly in the making of investments, and the principal part of whose income is derived therefrom, is entitled to relief under section 33, Income Tax Act, 1918 (which relates to relief in respect of expenses of management), in the same manner and to the same extent as if the business of the society were the business of a company.

Where the profits or gains of a company or society include any income which is chargeable to tax by virtue of the above provisions, but is not otherwise chargeable to tax, the following transitional provisions have effect:—

- (a) where the computation of profits or gains is required to be made by reference to any year or period other than the year of assessment the computation for that year or period is to be made in accordance with the rules

set out above, notwithstanding that those provisions were not in force in that year or period or some part thereof;

- (b) where a claim is made for a deduction in respect of the wear and tear or replacement of any machinery or plant under Rule 6 or Rule 7 of the Rules applicable to Cases I and II of Schedule D, Wear and Tear or Obsolescence Allowance will be computed as if there had been allowed, for all years of assessment prior to the year 1933-34, all such deductions for wear and tear (but not including any additional allowance—*i.e.*, the one-tenth addition—under section 18 Finance Act, 1932) as would have been allowable if these new provisions had been in force throughout those years; and, in computing the amount of profits or gains to be charged, no sum is to be deducted (otherwise than for obsolescence) in respect of the cost of the renewal or replacement of any machinery or plant exceeding the amount of such cost reduced by the total amount of all such deductions for wear and tear as would have been allowable as aforesaid;
- (c) no deduction for wear and tear can be carried forward from the year 1932-33 and no loss, or portion of a loss, which was sustained before 6th April, 1933, can be carried forward under or by reference to section 33, Finance Act, 1926, except so far as the deduction or loss, or portion of a

loss, as the case may be, related to transactions any profits or gains from which were chargeable with tax for the year 1932-33 or previous years.

Where any profits or income of a registered society arising in the year 1933-34 have, by virtue of these new provisions, ceased to be exempt from Income Tax chargeable by deduction and the tax has not been deducted therefrom, an assessment may be made on the society under Case III of Schedule D as if the profits or income were mentioned in Rule 1 of the Rules applicable to that Case and first arose in 1933-34 (§ 31

Payment of loan and share interest of registered societies without deduction of tax.

Any share interest or loan interest paid by a registered society must for 1933-34 onwards be paid without deduction of Income Tax ; but this

- (a) does not apply to any share interest or loan interest payable to a person whose usual place of abode is not within the United Kingdom ; and
- (b) does not render improper any such deduction made before the 1st October, 1933, which would have been a proper deduction if this new provision had not been enacted.

Any share interest or loan interest paid by a registered society without deduction of income tax is chargeable under Case III of Schedule D as if it were mentioned in Rule 1 of the rules applicable to that Case.

Where at any time, by virtue of the above, the income of a person from any such source becomes chargeable but has not previously been chargeable by direct assessment on that person, the assessment is to be made as if the source of that income were a new source of income acquired by that person at that time.

A registered society is entitled to have the amount of Income Tax which, but for any relief under this paragraph, it would be liable ultimately to bear for any year of assessment, reduced by a sum representing tax on the amount of share interest or loan interest paid in that year by the society without deduction of tax: and where due relief cannot be given for any year of assessment in respect of any part of the share interest or loan interest so paid by a society in that year, section 19, Finance Act, 1928 (which allows amounts assessed under General Rule 21 to be carried forward as losses), has effect as if the society had been assessed to tax for that year under General Rule 21 in respect of the payment of that part of the share interest or loan interest, and had paid tax under that assessment on the amount of the payment; but the relief does not apply to any loan interest in respect of or by reference to which a deduction or relief is allowable to the society in any other way.

The Special Commissioners will determine disputed claims and any relief due may be given either by discharge or reduction of any assessment, or by repayment, or by all or any of those means, as the case may require.

On or before 1st May in each year (commencing with the year 1934), every registered society must

deliver to the surveyor for the district in which its registered office is situate a return in such form as the Commissioners of Inland Revenue may prescribe, showing—

(a) the name and place of residence of every person to whom loan interest amounting to the sum of five pounds or more has been paid by the society in the year of assessment which ended next before the said 1st May ; and

(b) the amount of such loan interest paid in that year to each of those persons ;

and if such a return is not duly made as respects any year of assessment the society is not entitled to any relief in respect of any payments of loan interest which it was required to include in the return, and the amount of any relief or allowance which has been given in respect of any such payments may, if not otherwise made good, be assessed under Case VI of Schedule D and recovered from the society accordingly.

For the above purposes—

(a) the expression “registered society” has the same meaning as already defined, *supra* ;

(b) the expression “share interest,” in relation to a registered society, means any interest, dividend, bonus, or other sum payable to a shareholder of the society by reference to the amount of his holding in the share capital of the society ;

(c) the expression “loan interest,” in relation to a registered society, means any interest payable by the society in respect of any mortgage, loan, loan stock, or deposit ;

- (d) references to the payment of share interest or loan interest include references to the crediting of such interest (§ 32—1933).

✓ § 8.—Interest paid to Banks, etc.

The usual rule in the case of Income Tax in respect of interest payable on borrowed money is to assess the person paying the interest, leaving it to such person to recoup himself by deducting an amount representing tax when paying the interest.

This is not usually the case where banks are concerned, owing to the fact that in the majority of cases the interest will be payable in respect of short loans. If the interest is not “annual” interest, the person paying the interest has no power to deduct Income Tax when paying the interest. The banker will make a return in respect of the interest so charged, and will pay the Income Tax thereon in due course. The customer can therefore, on production of the banker’s certificate of interest paid, claim a return of an amount equal to Income Tax on the interest, provided he can prove that such interest was paid out of profits and gains brought into charge, *i.e.*, that during the year in which the interest was paid he was in receipt of income on which tax was paid equal to, or greater in amount than, the interest paid.

The case of *Holder v. Commissioners of Inland Revenue* ((1932), 16 T.C. 540), makes it clear that Bank Interest Relief can be claimed only by the person to whom the advance was made and that a guarantor does not come within the scope of the section.

A similar claim may be made in respect of interest paid to stockbrokers and discount houses (§ 36). This does not, however, include "contango" interest, or interest paid to moneylenders.

Where money is borrowed on short loan from a bank by a company or a firm, for use in trading, the practice is to treat the interest paid as a charge in the Profit and Loss Account, and so adjust the matter. Where the interest is so allowed, it is not paid out of profits brought into charge to tax, and no repayment under § 36 is competent; nor is it open to the taxpayer to reopen the assessments in order to make such a claim (*Muller & Co. v. C.I.R.* (1928), 14 T.C. 116). If the loan is for a capital purpose, the interest is not chargeable in the accounts, and would be the subject of a repayment claim under § 36. If the money is lent for the space of a year or more, the interest becomes annual interest, and it is the duty of the person paying the interest to deduct Income Tax when making the payment. In such cases, where the person concerned has income equal to, or greater in amount than the interest paid, he will retain the tax so deducted, and will show the payment in his return as an annual charge. He need only make a special return where the deduction has been under Rule 21, General Rules, and the tax is not collected in the ordinary way.

§ 9.—Management Expenses ; Insurance Companies, etc.

In the case of Life Assurance Companies, Savings Banks, and Companies whose business consists mainly in the making of investments, the Crown has the option

of taxing the untaxed interest either under Case I, Schedule D, as part of the profits of the business, or under Case III, IV or V (as may be appropriate) but not under both (*Norwich Union Fire Insurance Co. v. Magee* (1896), 3 T.C. 457; *Liverpool and London and Globe Insurance Co. v. Bennett* (1913), 6 T.C. 327). Such companies also suffer tax by deduction on their investment income, on property from which they receive rents, etc. As in many cases the income taxed by deduction or otherwise exceeds the amount on which tax would be payable were they assessed under Case I, Schedule D, on their net profits by reason of the fact that in a Case I assessment the profits would be arrived at after deducting expenses, a relief is given by § 33, Income Tax Act, 1918, whereby tax can be reclaimed so as to adjust this anomaly.

This section reads :—

33.—(1) Where an assurance company carrying on life assurance business or any company whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom, or any savings bank or other bank for savings, claims and proves to the satisfaction of the special commissioners that, for any year of assessment, it has been charged to tax by deduction or otherwise, and has not been charged in respect of its profits in accordance with the rules applicable to Case I of Schedule D, the company or bank shall be entitled to repayment of so much of the tax paid by it as is equal to the amount of the tax on any sums disbursed as expenses of management (including commissions) for that year :

Provided that—

(a) relief shall not be given under this section so as to make the tax paid by the company or bank less than the tax which would have been paid if the profits had been charged in accordance with the said rules (but any excess expenses on which relief is not given by reason of this provision can be carried forward to subsequent years, in the same manner as a loss, but not exceeding six years—*see* § 33—1933 below) ; and

(b) the amount of any fines, fees, or profits arising from reversions in the case of an assurance company, and, in the

case of any other company or any such bank, the amount of any income or profits derived from sources not charged to tax, shall be deducted from the amount treated as expenses of management for the year, and

(c) in calculating profits arising from reversions, the company may set off against those profits any loss arising from reversions for any previous year during which any enactment granting this relief was in operation.

(2) Notice of any claim to the special commissioners under this section, together with the particulars thereof, shall be given, in writing to the surveyor within twelve months after the expiration of the year of assessment in respect of which the claim is made, and where the surveyor objects to such claim the special commissioners shall hear and determine the same in like manner as in the case of an appeal to them against an assessment under Schedule D, and the provisions of this Act relating to the statement of a case for the opinion of the High Court on a point of law shall apply.

(3) A company or bank shall not be entitled to any relief under this section in respect of any expenses as to which relief may be claimed or allowed under rules 7 and 8 of No. V of Schedule A.

(4) Where an assurance company, not having its head office in the United Kingdom, is charged under Case III of Schedule D on a proportion of the income from the investments of its assurance fund, or on a basis substituted therefor, the relief in respect of expenses of management shall be calculated by reference to a like proportion of its total expenses of management for the year estimated according to the provisions of this Act.

(5) Where income arising from the investments of the foreign life assurance fund of an assurance company has been relieved from tax in pursuance of the provisions of this Act, a corresponding reduction shall be made in the relief granted under this section in respect of the expenses of management.

Section 33 must be read in conjunction with § 16 1923 :—

16.—(1) Where the profits of an assurance company in respect of its life assurance business are for the purposes of the Income Tax Acts computed in accordance with the rules applicable to Case I of Schedule D, such part of those profits as belongs or is allocated to, or is reserved for, or expended on behalf of, policy-holders or annuitants shall be excluded in making the computation, but if any profits so excluded as being reserved for policy-holders or annuitants cease at any time to be so reserved and are not allocated

to or expended on behalf of policy-holders or annuitants, those profits shall be treated as profits of the company for the year in which they ceased to be so reserved.

(2) Where an assurance company carrying on the business of life assurance claims repayment under section thirty-three of the Income Tax Act, 1918, in respect of sums disbursed as expenses of management there shall, in addition to the amount directed by proviso (b) of subsection (1) of the said section to be deducted from the amount treated as expenses of management, be deducted therefrom the amount of any profits arising from the granting of annuities on human life.

For the purposes of this subsection, profits arising from the granting of annuities on human life shall be computed in accordance with the rules applicable to Case I of Schedule D :

Provided that in making any such computation—

(a) The provisions of subsection (1) of this section shall apply with the necessary modifications and in particular with the omission therefrom of all references to policy-holders ; and

(b) No deduction shall be allowed in respect of any expenses of management in respect of which repayment of tax may be claimed under the said section thirty-three ; and

(c) There may be set off against the profits any loss, to be computed on the same basis as the profits, which has arisen in connection with the granting of annuities on human life in any previous year during which this section was in operation.

(3) Where an assurance company carries on both ordinary life assurance business and industrial life assurance business, the business of each such class shall, for the purposes of the Income Tax Acts, be treated as though it were a separate business, and section thirty-three of the Income Tax Act, 1918, shall apply separately to each such class of business.

(4) For the purpose of removing doubts, it is hereby declared that a mutual assurance company carrying on life assurance business is entitled to relief under section thirty-three of the Income Tax Act, 1918, in the same manner and to the same extent as if the business of the company were the business of a proprietary assurance company, and the provisions of this section shall be construed accordingly.

A registered society (*i.e.*, one registered under the Industrial and Provident Societies Acts, 1893 to 1928, or under the Industrial and Provident Societies Acts

(Northern Ireland), 1893 to 1929) whose business consists mainly in the making of investments, and the principal part of whose income is derived therefrom is entitled to relief under § 33—1918 (§ 31 (4)—1933).

In view of the hardship involved in those cases where the repayment was restricted by reason of the proviso that the repayment is not to reduce the tax borne below the tax which would have been payable if the company had been charged according to the rules of Case I, Schedule D, it was enacted by the Finance Act, 1933, § 33, that :—

Where, on a claim for relief under § 33, Income Tax Act, 1918, made by a company, society, or bank *for any year of assessment AFTER the year 1932-33* in respect of the sums disbursed by it as expenses of management (including commissions) for that year, relief is disallowed in respect of the whole or part of those sums by reason only of the provisions of proviso (a) to subsection (1) of the said section, the amount in respect of which relief has been so disallowed may be carried forward and treated for the purpose of the said section as if it had been disbursed as aforesaid for any of the SIX YEARS of assessment next following :—

Provided that relief in respect of an amount so carried forward shall be given for the first year of assessment next following, in so far as relief can be so given in accordance with the provisions of the said section in respect of that amount as well as in respect of the sums actually disbursed as aforesaid for that year, and so far as it cannot be so given, then for the next year of assessment, and so on.

In the case of life insurance companies carrying on other classes of insurance, the life assurance business is to be treated as a separate business for Income Tax purposes (Rule 15, Cases I and II, Sch. D).

The life insurance profits are determined actuarially, usually every five years, and after deducting any undivided balance from the previous quinquennium, and also the taxed interest during the actual five years, one-fifth of the remaining surplus forms the assessable profit.

If a more frequent valuation is taken, the company will be assessed on the average so taken.

Where it is required to show under § 34 that an assurance company has sustained a loss in respect of the life assurance business, any income of the company derived from the investments of the life assurance fund is to be treated as part of the profits of the business (Rule 15, Cases I and II, Sch. D).

In the case of fire and accident insurance companies the usual rule is to carry forward in each year a percentage of the premiums to represent unexpired risks.

In *Imperial Fire Insurance Co. v. Wilson* (1876), 35 L.T. 271, such a percentage was disallowed on the ground that the adjustment was only made for Income Tax purposes, and the unearned premiums were not actually carried forward in the books.

In *General Accident, Fire and Life Assurance Corporation v. McGowan* (1908), A.C. 207, the accounts of the company showed that the unexpired risks were not taken into account for the purpose of ascertaining the amount of the profits divisible among the shareholders, and the sums in respect of unexpired risks

were taken to general reserve after declaring the dividends out of the profits. The House of Lords held that as it was not shown that the method of assessing, without deduction in respect of unexpired risks, was unfair, *having regard to the facts of the particular case*, the deduction claimed was inadmissible.

In *Sun Insurance Office v. Clark* (1912), A.C. 443, 40 per cent. was allowed as deduction by way of unearned premiums. In this case the deduction had actually been made in the books, and the Commissioners had found that it was a reasonable percentage to carry forward. It is a question of facts and figures in each case whether the assessment is fair both to the Crown and to the subject.

A life insurance company paying annuities is bound to deduct Income Tax therefrom, and to account for such tax to the Inland Revenue Commissioners, so far as the annuities are not paid out of profits or gains brought into charge. A company cannot, however, treat such annuities as paid out of profits or gains brought into charge to Income Tax to a greater amount than the taxed income of its annuity fund (Rule 21 of General Rules applicable to all Schedules).

It must be remembered that any relief claimed under § 33 will be limited to such an amount as will reduce the tax payable to that which would have been paid if the company had been charged under the rules before-mentioned; and in calculating the expenses of management in respect of any such claim, any fines, fees, casual profits, profits arising from reversions, and other untaxed income or profits must be deducted therefrom. The amount of the management expenses on which repayment is refused

under this proviso, can, however, be carried forward and added to the management expenses of the next following year, and any excess therefrom carried forward again, up to a maximum period of six years (§ 33—1933).

This relief is given not only to assurance companies and to savings banks, but also to any company whose business consists mainly in the making of investments, and the principal part of whose income is derived therefrom, *e.g.*, trust companies; but no relief will be granted in respect of expenses taken into consideration in the reduction of the gross to net Schedule A assessment of any property (§ 33).

Notice of any such claim must be given in writing to the Inspector within twelve months after the expiration of the Income Tax year to which it relates.

It is provided by Rule 3, Case III of Schedule D, that where a foreign assurance company carries on business in the United Kingdom, any income of the company from the investments of the life assurance fund (excluding the annuity fund, if any), wherever received, is to be deemed profits under the third case of Schedule D, and the proportion of such income from investments as bears the same ratio to the total income from investments as the amount of premiums received in that year from policy-holders residing in the United Kingdom, or whose proposals were made to the company in the United Kingdom, bears to the total premiums received by the company, is taxable accordingly. If relief is claimed by such companies in respect of expenses, such expenses will be apportioned in the same manner (Rule 3, Case III, Schedule D, and § 33). Under Case III, Schedule D, the assessment will be based on the results of the previous

year. All such assessments are to be made by the Special Commissioners.

Where the profits of an insurance company in respect of its life assurance business are computed in accordance with the rules applicable to Case I of Schedule D such part of the profits as belongs or is allocated to policy-holders or annuitants shall be excluded in making the computation; but if any profits so excluded cease at any time to be so reserved, they shall be treated as profits of the company for the year in which they cease to be reserved.

In claiming repayment in respect of sums disbursed as expenses of management under § 33, Income Tax Act, 1918, any profits arising from the granting of annuities shall be deducted from the expenses of management. Such profits are to be determined in accordance with the Rules applicable to Case I of Schedule D (§ 16—1923).

For the purpose of claims under § 33, Income Tax Act, 1918, a mutual insurance company is on the same footing as a proprietary assurance company, and industrial life assurance is to be treated as a business separate from ordinary life assurance (§ 16—1923).

Where an investment company has raised capital abroad, and pays the interest thereon in local currency, the loss on exchange is not an expense of management (*Bennet v. Underground Electric Railways Co. of London* (1923), 8 T.C. 475).

An investment company claiming relief on management expenses had income from (1) rents of properties assessed under Schedule A, (2) taxed interest, and (3) deposit interest assessed under Case III, Schedule D. The company sought to exclude the rents in arriving

at the amount on which tax would have been paid had the company been assessed under Case I, Schedule D. Held that the company were carrying on the business of investment in land and house property, and the rents were properly taken into account (*Rosyth Building and Estate Co. v. Rogers* (1921), 8 T.C. 11).

Illustrations.

(1) The Revenue Accounts of an investment company for the years ended 31st March, 1932, and 31st March, 1933, are as under—

	1930-31	1931-32		1930-31	1931-
	£	£		£	£
To Expenses of Administration .	5,760	6,300	By Dividends, less Tax	21,300	25,1
„ Directors' and Auditors' Fees	1,750	1,750	„ Interest on Loans, less Tax	17,040	19,1
„ Managing Director's Remuneration	7,500	7,500	„ Transfer Fees	60	
„ Travelling Expenses	1,040	1,830			
„ Depreciation of Fixtures	150	140			
„ Bank Interest	3,370	2,860			
Income Tax—					
Sch. A on Offices	300	300			
Sch. E on Directors' Fees					
and Managing Director's					
Remuneration	1,570	1,610			
„ Balance, Net Profit	16,960	22,460			
	<u>£38,400</u>	<u>£44,750</u>		<u>£38,400</u>	<u>£44,</u>

Show how the company's Income Tax liability should be dealt with for the year 1932-33.

A claim under § 33, Income Tax Act, 1918, should be made in writing to the Inspector of Taxes, not later than 5th April, 1934, for a repayment of Income Tax in respect of management expenses, arrived at as follows:—

The adjusted profit of the preceding year (1931-32) was . -

Net Profit per accounts	£16,960
Add—Tax deducted from dividends	7,100
do. interest	5,680
Sch. A tax	300
Depreciation	150

30,190

Deduct—Net Annual Value of premises 1,200

Profit adjusted in accordance with Rules of Case I (treating Dividends and Interest as part of the Trading Profits) £28,990

The management expenses for 1932-33 were :—

Expenses of Administration	.. ..	£6,300
Directors' and Auditors' Fees	.. ..	1,750
Managing Director's Remuneration	.. ..	7,500
Travelling Expenses	.. ..	1,830
Bank Interest	.. ..	2,860
Tax on Directors' Fees, etc.	.. ..	1,610
Net Annual Value of Offices	.. ..	1,200

23,050

Deduct · Untaxed Income—Transfer Fees 50

£23,000

Tax deducted from Dividends, 1932-33 .. £8,350

do. Interest do. .. 6,550

Total Tax suffered on profits, 1932-33 .. £14,900

Tax reclaimed on Management Expenses,

£23,000 @ 5/- 5,750

Net tax suffered £9,150

Had the company been charged according to the rules of Case I, on the preceding year's profit, the tax payable would have been £28,990 @ 5/- = £7,247 10s. 0d. only. Since the tax ultimately suffered (after the reclaim) exceeds the latter sum, the repayment of £9,150 is made in full.

The company will also bear the Schedule A tax of £300. Had the property been let, the annual value would have had to be brought into account as a profit in arriving at the adjusted profit, but would not have affected the amount of the tax reclaimed.

If the adjustment is agreed with the Inspector before the company has paid over the tax on directors' fees, etc., the amount of that tax will be deducted from the tax repayable.

(2) The notional Case I assessment of an investment company for 1933-34 (*i.e.*, its gross receipts less management expenses in 1932-33) was £3,000. Its actual gross income for 1933-34 was £12,000, and its management expenses £9,500. Since a repayment cannot reduce the tax borne to less than the tax on £3,000, repayment will be restricted to tax on £9,000 only, leaving £500 to be carried forward under § 33—1933.

If the gross income for 1934-5 is £12,400, and the management expenses £9,700 the claim for that year will be, in the first place, on £9,700, reducing the tax borne to tax on £2,700. The notional Case I assessment will be $£12,000 - £9,500 = £2,500$ (previous year's figures), so that £200 can be added to the repayment claim from the amount brought forward, reducing the tax finally borne to that on £2,500 (*i.e.* £2,700 - £200), and leaving £300 to be carried forward.

Where for any year of assessment rights to work minerals in the United Kingdom are let, the lessor is entitled to claim to be repaid so much of the Income Tax paid by him by deduction or otherwise in respect of the rent or royalties for that year as is equal to the amount of the tax on any sums proved to the satisfaction of the Special Commissioners to have been wholly, exclusively, and necessarily disbursed by him as expenses of management or supervision of those minerals in that year; but no repayment of tax will be made—

- (a) except on proof to the satisfaction of the Special Commissioners of payment of tax on the aggregate amount of the rent or royalties; or
- (b) if, or to such extent as, the said expenses have been otherwise allowed as a deduction in computing income for the purposes of Income Tax (§ 26—1922).

The claim must be made within 12 months of the end of the year of assessment, and if the Inspector of Taxes objects to the repayment, the claim is to be heard by the Special Commissioners, and if necessary an appeal may be taken to the Courts on a question of law.

By concession, a similar claim may be made in respect of the expenses of keeping up patent rights, including renewal fees.

CHAPTER X.

Dominion Income Tax Relief.

- § 1 —INTRODUCTION
- 2 —EXPLANATION OF DOMINION INCOME TAX.
- 3 —NATURE OF THE RELIEF
- 4 —TIME AT WHICH RELIEF IS TO BE ALLOWED.
- 5 —THE DOMINION YEAR
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- 7 —EFFECT OF LOSSES
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- 10 —PAYING AGENTS
- 11 —ADJUSTMENTS OF FIRST £250 OF TAXABLE INCOME WHERE EXCESSIVE RELIEF OBTAINED
- 12 —DIVIDENDS DECLARED OUT OF PROFITS TAXED IN MORE THAN ONE DOMINION
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- 18 —DOMINION INCOME TAX RELIEF ON PREFERENCE DIVIDENDS
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CHAPTER X.

DOMINION INCOME TAX RELIEF.

§ 1.—Introduction.

It frequently happens that income chargeable to United Kingdom Income Tax and sur-tax has also been charged in another country with similar taxes, and where this occurs it is necessary to ascertain whether the place where the income accrued is situate in a foreign country or a British Dominion. No difficulty is experienced in dealing with income arising in a foreign country, as in computing the liability to United Kingdom Income Tax a deduction from the foreign income is claimed in respect of the foreign tax suffered.

Where, however, such double taxation arises within the British Empire, on the principle that a person should, so far as practicable, be taxed once only in the British Empire, no deduction in the gross assessment is allowed in respect of Dominion Income Tax, but provision is made for granting relief from United Kingdom Income Tax in respect of Dominion Income Tax.

The relieving clauses (for Dominions other than the Irish Free State) are contained in § 27 of the Finance Act, 1920, the object being to lighten the burden of the taxes so that although the taxpayer bears tax ultimately only once in the British Empire, it is at the higher of the two rates. The relief is allowed in

this country up to one-half of the taxpayer's effective rate of tax here, the remainder of the relief being claimed in the particular Dominion. The scheme pre-supposes that all of the Dominions grant relief in respect of United Kingdom Income Tax, but at the present time such reciprocal relief is not common to all of the Dominions. Where no such reciprocal provisions have been made a special adjustment is necessary, as outlined in subsection 4 of § 27, in § 19 of this Chapter.

The special provisions affecting the Irish Free State are described in § 21 of this Chapter.

§ 2.—Explanation of Dominion Income Tax.

A "Dominion Income Tax," in respect of which relief is obtainable, is defined in proviso (c) of subsection 8 of § 27 as "any Income Tax or super-tax charged under any law in force in any Dominion, if that tax appears to the Special Commissioners to correspond with United Kingdom Income Tax or super-tax." This clearly rules out certain taxes not complying with the conditions; *e.g.*, Federal land tax in Australia, and the railway companies' tax on miles of permanent way peculiar to some parts of Canada. It should further be noted that the term "Dominion" for this purpose includes British Protectorates and countries over which a British mandate is exercised (§ 27 (8) (a)).

§ 3.—Nature of the Relief.

Relief is granted to any person who has paid, by deduction or otherwise, or is liable to pay, United Kingdom Income Tax for any year of assessment

on any part of his income and proves to the satisfaction of the Special Commissioners that he has paid Dominion Income Tax for the same year on the same part of his income, (the relief being calculated at either the Dominion rate of tax, or one-half of the appropriate rate of United Kingdom tax, whichever is the less (§ 27 (1)).

The "Dominion rate of tax" is ascertained by dividing the amount of the Dominion Income Tax paid for the year by the amount of the income in respect of which the Dominion Income Tax is charged for that year; except that where the Dominion Income Tax is not charged upon actual ascertained profits the rate shall be determined by the Special Commissioners (§ 27 (8) (d)). As will be seen later, the method of computation of the Dominion rate of tax differs from that to be adopted in computing the appropriate rate of United Kingdom tax, the divisor being the amount of income in respect of which the Dominion tax is charged, and not the taxable income after deduction of personal allowances.

Illustration.

A. is assessed in the Dominion as follows :—

Profits	£1,500
Depreciation	300

1,200

Abatement	£175
Wife's Allowance	75
Child's Allowance	150

400

£800 @ 2/6 = £100.

His Dominion Rate is $\frac{£100}{1,200} = 1/8$

The exceptional cases where the determination of the Dominion rate of tax is left to the Special Commissioners cover instances where the Dominion assessments are on a purely arbitrary basis bearing little or no relation to profits earned in the Dominion, and frequently differing therefrom considerably. To grant relief on the Dominion profits charged to British Income Tax, having regard to the arbitrary rate of tax charged under the Dominion assessment, would not answer in practice, it being apparent that the results might be inequitable either to the Inland Revenue or to the taxpayer.

The "appropriate rate of United Kingdom Income Tax" means the rate at which the claimant has borne, or is liable to bear, United Kingdom Income Tax (*i.e.*, the "standard rate" portion) to which is added the rate of United Kingdom sur-tax. The rate of United Kingdom Income Tax is that obtained by dividing the amount of Income Tax payable (before deducting any relief for life assurance premiums) by the amount of the taxable income of the person concerned; the rate of United Kingdom sur-tax is the rate obtained by dividing the amount of sur-tax payable for the preceding year by the amount of that person's total income from all sources as estimated for Income Tax purposes for that preceding year (§ 27 (8) (*d*), 1920, and § 46 and Fifth Schedule, Part II, 1927).

The rate for 1933-34 is therefore found by the following formula:—

$$\frac{\text{Income Tax payable for 1933-34}}{\text{Taxable Income for 1933-34}} + \frac{\text{Sur-tax payable in 1933-34 for 1932-33}}{\text{Statutory Total Income for 1932-33}}$$

Illustration.

A taxpayer, whose taxable income for the year 1932-33 for income tax purposes amounts to £3,600 (tax payable £778 15s.),

finds that he has also paid Dominion Income Tax at the rate of 2s. 6d. in the £ upon £500, part of his income for that year.

For the year 1931-32, his total income for Income Tax purposes amounts to £4,000 and the sur-tax payable amounts to £171 17s. 6d.

The relief to which he is entitled is ascertained as follows :—

The rate of Dominion Income Tax is 2s. 6d. in the £.

The rate of United Kingdom Income Tax is 4s. 3 9d. in the £, being computed by dividing the total Income Tax, £778 15s. 0d. by the taxable income, £3,600.

The rate of United Kingdom sur-tax is 10 3d. in the £, being computed by dividing the total sur-tax £171 17s. 6d. by the total sur-tax income £4,000

The appropriate rate of United Kingdom Income Tax is therefore 5s. 2 2d. in the £, being the aggregate of the Income Tax and sur-tax rates

As one-half of the United Kingdom rate of tax is 2s. 7 1d., which is more than the Dominion rate of tax 2s. 6d., he is entitled to claim repayment upon £500 at 2s. 6d. = £62 10s. 0d.

It must clearly be understood that the United Kingdom Income Tax and sur-tax rates to be taken are the rates based upon the tax payable *in* the year of assessment, and it is immaterial whether or not the taxpayer is accountable for sur-tax *for* the year of assessment for which he claims relief in respect of the same source of income.

§ 4.—Time at which Relief is to be allowed.

The time at which the relief is to be allowed is referred to in subsection (2) of § 27, which provides that relief shall be granted by way of repayment of tax where a person has not established his claim before the 1st January in the year of assessment. In order to obtain relief for any year of assessment, the taxpayer must produce the receipts for tax paid in the Dominion, or a certificate in respect of his taxation liability signed by the competent authority in the Dominion. Quite

frequently no such evidence will be available, and other means must be found to satisfy the requirements of the Inspector of Taxes. For example, in support of a claim in respect of an Indian dividend, a certificate might be obtained from the secretary of the company giving details of the effective rates of Indian Income Tax and Indian companies super-tax paid on the profits of which the dividend forms a part. In practice, the Inspector of Taxes can usually obtain the necessary information through departmental channels.

It should be noted that Dominion Income Tax relief can be obtained by anyone who suffers both Dominion and United Kingdom tax on the same income, whether that person is resident in the United Kingdom or not. Notice of claims must be given in writing to the Inspector of Taxes, or, in the case of non-residents, to the Commissioners of Inland Revenue. Appeals lie to the Special Commissioners, who have power to determine the rate and amount of the relief, and all matters incidental to the determination thereof (§ 28, 1921). In practice, non-residents and paying agents must address applications to the Chief Inspector (Claims), Cornwall House, Stamford Street, S.E.1.

§ 5.—The Dominion Year.

The normal basis to be adopted for the purpose of relief is to have regard to the tax charged for the Dominion year ending within the United Kingdom fiscal year, although in practice it may be found that it is more convenient to adopt some other basis. In these exceptional cases it is a matter for agreement with the Inspector of Taxes, and, provided that the

basis adopted is adhered to consistently year by year, no objection is likely to be raised. However, the final decision rests with the Commissioners of Inland Revenue to whom the right is reserved by subsection (7) of § 27, to prescribe the Dominion year to be taken as corresponding to the United Kingdom year of assessment.

§ 6.—Agreement of Amounts of Dominion and United Kingdom Assessments unnecessary.

It is most improbable, owing to the different bases of assessment, that the amounts of the income assessed in the two countries will agree, but this is quite unnecessary, inasmuch as only the rates of tax for the year govern the relief that can be claimed. In the Dominion, the profits assessed for a particular year may be considerably smaller than the Dominion profits forming part of the assessment in the United Kingdom. Nevertheless, having ascertained the Dominion rate of tax, that rate (subject to the restriction to one-half the appropriate rate of United Kingdom tax where necessary) is used in computing the relief due in respect of the profits doubly assessed. The reverse effect is seen at another time when the Dominion profits in the United Kingdom assessment are considerably smaller than the profits assessed in the Dominion, in which case the Dominion Income Tax relief obtained is less than the Dominion Income Tax paid.

§ 7.—Effect of Losses.

Where there is a "nil" assessment in the United Kingdom, or in the Dominion, it is clear that no rates of tax can be computed, and no claim to relief

substantiated since there is no double taxation; from which it follows that even where Dominion tax has been paid for the corresponding year, if there are no Dominion profits included in the United Kingdom assessment, no relief is due (*Rolls Royce, Ltd. v. Short* (1925), 10 T.C. 59). Following this principle a complication arises where a taxpayer conducts business in more than one Dominion, making profits in some and losses in others. In this case it is necessary to determine on United Kingdom Income Tax lines the amount of profits from each Dominion included in the United Kingdom assessment. Where there is no Dominion profit included in the assessment (as in the *Rolls Royce* case), or no Dominion assessment for the corresponding year, no relief can be claimed. If, however, the relief were given in respect of the profits falling into the United Kingdom assessment from the Dominions, where Dominion rates of tax obtained for the corresponding year, quite conceivably there would be profits apparently available for relief larger than the United Kingdom assessment. Such a position calls for particular consideration, and relief on the Dominion profits can only be obtained in so far as the losses in the assessment are covered by profits not taxed in a Dominion. Where this is not the case, the Dominion profits available for relief must be reduced by the Dominion losses.

Illustration.

In 1931 a company makes a profit, adjusted for Income Tax, £10,000, which was assessed for the year 1932-33. This result was derived from—

Dominion A	.. Profit	.. ..	£11,000
Dominion B	.. Loss	.. ..	3,000
United Kingdom	Profit	.. ..	2,000

For 1932-33, the Dominion rates were—

Dominion A	..	..	1/0
Dominion B	..	..	1/6

As there is no profit from Dominion B liable to United Kingdom Income Tax for 1932-33, no relief is due in respect of Dominion B tax.

The loss in Dominion B is first set against the non-Dominion profits of £2,000, leaving £1,000 loss to be deducted from Dominion A profits available for relief.

The Dominion Income Tax relief due is therefore £10,000 @ 1s. 0d. = £500.

Illustration embodying a § 34 claim.

For 1932-33, a company was charged on £10,000, being Dominion profits £6,000, and United Kingdom profits £4,000. Dominion rate was 2s. 0d.

The actual trading for 1932-33 resulted in an adjusted loss of £6,000, divided between the Dominion £1,000, and United Kingdom £5,000. The company claimed relief under § 34.

The position is, therefore—

		Dominion	United kingdom
Assessment 1932-33	..	£10,000	£6,000
Section 34, Loss deducted		5,000	1,000
		5,000	5,000
			Nil.

Balance of United Kingdom

§ 34 Loss set-off against

Dominion Profit	..	1,000	1,000
-----------------	----	-------	-------

Assessment after § 34 claim	£4,000	£4,000
-----------------------------	--------	--------

Tax payable, £4,000 @ 5/-	£1,000
---------------------------	----	----	--------

Less Dominion Income Tax relief, £4,000			
---	--	--	--

@ 2/-	400
-------	----	----	-----

£600

§ 8.—Two or more Dominions.

It will thus be seen that separate treatment must be afforded where a taxpayer has suffered different Dominion taxes on different parts of his income. Each

portion must be segregated, and the several units dealt with independently. If, in any instance, the relief has to be restricted, it is not open to the taxpayer to transfer the excess to another part of the income which has borne Dominion tax at a lower rate.

Similar considerations arise where the income has been subject to more than one Dominion tax, an instance of which is Australian Federal Income Tax, and South Australian Income Tax. The two Dominion rates are computed separately, and then aggregated in order to arrive at the Dominion rate of tax suffered.

Illustration.

State Assessment	..	..	£900	
Abatement	..	..	150	
			<hr/>	
			£750 @ 2/0 =	£75
			<hr/>	
Rate	=	£75		s. d.
		<hr/>		1 8
		900		
Federal Tax £680 @ 1/-	=	£34		
		£34		
Rate	=	<hr/>		1 0
		680		
				<hr/>
Dominion Rate ..	..	..	..	2 8

§ 9.—Effect of Allowances and Deductions on amount on which Relief obtained.

Where the total income of an individual consists wholly of income from the Dominions, the allowances and deductions made in arriving at the taxable income have the effect of restricting the Dominion Income Tax relief, as this is allowed on taxable income and not on the amount of the Dominion income. However, no such adjustment falls to be made where there is other

income sufficient to cover the allowances and deductions, the practice being to apply the allowances first to non-Dominion income.

Illustration (1).

A taxpayer has gross income, £988 for 1932-33, derived wholly from a Dominion, and has suffered Dominion tax thereon at the rate of 1s. 6d. He is married, and has two children, in respect of whom deductions are allowed.

			£	s.	d.
Gross Income	..	..	988	0	0
Personal Allowance	..	£150			
Children	..	..	90		
			—	240	0 0
Taxable Income	..	..	£748	0	0
Chargeable—	..				
£175 @ 2/6 in the £	..	..	21	17	6
573 @ 5/ in the £	..	..	143	5	0
Gross Duty	..	..	165	2	6
Appropriate Rate, £105 2s 6d					
— 748 = 4s 5d					
Less Dominion Income Tax relief					
£748 @ 1/6	..	..	56	2	0
Net Liability	..	..	£109	0	6

A taxpayer, whose circumstances in all other respects are similar to the foregoing, has £300 Gross Taxed Dividends in addition. The liability is then —

			£	s.	d.
Gross Dominion Income	..	..	988	0	0
Gross Taxed Dividends	..	..	300	0	0
			1,288	0	0
Personal Allowance	..	£150			
Children	..	..	90		
			—	240	0 0
Taxable Income	..	..	£1,048	0	0

INCOME TAX.

Chargeable—	£	s.	d.
£175 @ 2/6 in the £	21	17	6
873 @ 5/- in the £	218	5	0
Gross Duty	240	2	6
Appropriate Rate, £240 2s 6d			
- 1,048 = 4s 7d			
Less Tax on Dividends			
£300 @ 5/-	£75	0	0
Dominion Income			
Tax relief £988 @ 1/6	74	2	0
	149	2	0

Net liability on Dominion Income .. £91 0 6

Next for consideration is the case where there is no other income, and varying rates of Dominion tax. We have already seen that the allowances are applied first to income not taxed in a Dominion, and similar treatment prevails now, the allowances being first set against the income subject to the lowest rate of Dominion Income Tax, in order that the taxpayer may get relief from British tax at the highest rates available. If then not wholly used, the balance of the allowance is applied against the next higher rate until the allowances are fully used.

It will be noticed that this adjustment relates only to individuals, and not to companies, on which the tax is charged at the standard rate without any such deductions.

Illustration (2).

A married taxpayer is assessed for 1932-33 as follows :—

Income from Dominion A	£300	(Dominion Rate 1/6)
„ „ Dominion B	200	(Dominion Rate 1/3)
„ „ Dominion C	100	(Dominion Rate 1/0)
Non-Dominion Income	100	

£700

Deduct Personal Allowance 150

Taxable Income .. £550

The personal allowance of £150 is set first against non-Dominion income, the balance being applied against income subject to Dominion income tax at the lowest rate.

	£	s.	d.
Tax payable £175 @ 2/6 ..	21	17	6
375 @ 5/- ..	93	15	0
	<hr/>		
	115	12	6

Appropriate Rate £115 12s. 6d. ÷ 550 = $4/2\frac{1}{2}$.

The relief is therefore—

	£	s.	d.
Dominion C. £50 @ 1/- ..	2	10	0
„ B. 200 @ 1/3 ..	12	10	0
„ A. 300 @ 1/6 ..	22	10	0
	<hr/>		
	37	10	0
£550	<hr/>		
Net liability ..	£78	2	6

Had the appropriate rate been say 2/10 in the £, the relief on the income from Dominion A would have been limited to half the Appropriate Rate, i.e., 1/5 in the £.

A company must pass on to its members the relief it obtains (§ 27 (5)). This is effected by reducing the rate of tax deducted from dividends.

Illustration (3).

A company's total income for 1932-33 was £24,000, including £10,000 from a dominion the rate of tax in which was 3/.

Assessment, 1932-33—£24,000 @ 5/-	£6,000
Less Dominion Income Tax Relief £10,000 @ 2/6 ..	1,250
(half standard rate, being less than Dominion rate)	

Net United Kingdom Tax £4,750

The company, having suffered only £4,750 U.K. tax on £24,000, can deduct at $\frac{£4,750}{£24,000} = 3/11\frac{1}{2}$ in the £, viz

	s	d
Standard Rate	5	0
Less D I T R $\frac{£4,750}{£24,000}$	1	0½
	<hr/>	
	3	11½

If the shareholder's appropriate rate exceeds 5/-, he has had too little relief and can claim an appropriate refund; if it is less than 5/-, he has had too much relief, and the excess will be assessed upon him (see § 11 *post*).

It should be noted that the relief is given to "any person" who suffers the double taxation, *i.e.*, residence is immaterial. A non-resident person's appropriate rate is thus the standard rate plus his sur-tax rate, if any, except in the case of a British subject who is not resident in the United Kingdom. The appropriate rate of the latter is found in exactly the same manner as that of a resident.

Illustration (4).

A British subject resident in Paris was chargeable as follows —

1932-33—Income liable to tax in the United Kingdom ..	£3,000 ✓
Income not liable to tax in the „ „ (earned)	1,500
	£4,500

Deduct Allowances—

His Income chargeable to tax in the United Kingdom for 1931-32 was £3,000.	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Earned Income (Paris) ..</td> <td style="width: 60%; text-align: right;">£300</td> </tr> <tr> <td>Personal</td> <td style="text-align: right;">150</td> </tr> <tr> <td>Children</td> <td style="text-align: right;">90</td> </tr> <tr> <td></td> <td style="text-align: right;"><u>540</u></td> </tr> </table>	Earned Income (Paris) ..	£300	Personal	150	Children	90		<u>540</u>
Earned Income (Paris) ..	£300								
Personal	150								
Children	90								
	<u>540</u>								

<p>Sur-tax, 1931-32.</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">£2,000</td> <td style="width: 60%; text-align: right;">Nil.</td> </tr> <tr> <td>£500 @ 1/- .. 25</td> <td style="text-align: right;">0 0</td> </tr> <tr> <td>£500 @ 1/3 .. 31</td> <td style="text-align: right;">5 0</td> </tr> <tr> <td></td> <td style="text-align: right;"><u>£56 5 0</u></td> </tr> <tr> <td>Add 10% .. 5</td> <td style="text-align: right;">12 6</td> </tr> <tr> <td></td> <td style="text-align: right;"><u>£61 17 6</u></td> </tr> </table>	£2,000	Nil.	£500 @ 1/- .. 25	0 0	£500 @ 1/3 .. 31	5 0		<u>£56 5 0</u>	Add 10% .. 5	12 6		<u>£61 17 6</u>	<p>Notional Taxable Income <u>£3,960</u></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">£175 @ 2/6 ..</td> <td style="width: 60%; text-align: right;">21 17 6</td> </tr> <tr> <td>£3,785 @ 5/- ..</td> <td style="text-align: right;">946 5 0</td> </tr> <tr> <td></td> <td style="text-align: right;"><u>£968 2 6</u></td> </tr> </table>	£175 @ 2/6 ..	21 17 6	£3,785 @ 5/- ..	946 5 0		<u>£968 2 6</u>
£2,000	Nil.																		
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£175 @ 2/6 ..	21 17 6																		
£3,785 @ 5/- ..	946 5 0																		
	<u>£968 2 6</u>																		

Less Life Assurance Relief—

£120 @ 2/6	15 0 0
	<u>£953 2 6</u>

Proportion chargeable in United Kingdom,

$\frac{3000}{3960} \times £953 \text{ 2s. 6d.}$	=	£635 8 4
---	---	----------

Appropriate Rate—

$\frac{3000}{3960} \text{ of } £968 \text{ 2s. 6d.}$	=	say 4s. 10½d.
$\frac{3000}{3960} \text{ of } 3,960$		

Add Sur-tax Rate $\frac{£61 \text{ 17s. 6d.}}{£3,000}$	say	$\frac{5}{5 \text{ } 3\frac{1}{2}}$
--	-----	-------------------------------------

DOMINION INCOME TAX RELIEF.

399

	Carried forward ..	£635	8	4
The United Kingdom income was from a company—33 $\frac{1}{3}$ % of whose income was taxed in a Dominion at 2/9				
1/3	Dominion Tax Relief, £1,000 at 2/7 $\frac{1}{2}$..	132	5	10
		<hr/>	<hr/>	<hr/>
		503	2	6
<i>Less Tax deducted at source by company</i>				
	£3,000 @ 4/2	625	0	0
		<hr/>	<hr/>	<hr/>
	Tax Repayable	£121	17	6
		<hr/>	<hr/>	<hr/>

NOTE.—Since the company received relief at 2/6 (half its appropriate rate, being less than the Dominion rate) on one-third of its income, it would pass on relief at 10d. (1/3rd of 2/6) in the £ on its whole profits, deducting tax at 4/2 in the £.

§ 10.—Paying Agents.

Where Dominion dividends and interest are paid to persons in this country by a paying agent who deducts tax, the general procedure is for the Dominion income tax relief to be agreed by the paying agent with the Special Commissioners, the agent then deducting tax at the standard rate less Dominion Income Tax rate of relief, and accounting to the Inspector of Foreign and Colonial Dividends. It must be kept in mind that the total dividend in the hands of the paying agent has already borne Dominion Income Tax, and therefore an appropriate addition must be made to arrive at the true gross dividend on which United Kingdom Income Tax is chargeable. In cases where the paying agent is not able to ascertain the amount of this addition, he arranges to leave the adjustment to be dealt with by the Inland Revenue authorities directly with the actual recipients by means of an assessment under

Case VI of Schedule D. Where this occurs the paying agent deducts tax at the standard rate on the dividend in his hands (§ 27 (4)).

Illustration.

A Paying Agent in England received from a company in a reciprocating Dominion a dividend of £185 to be paid over to a shareholder in England. He agreed the Dominion Rate of Tax with the Special Commissioners at 1/6 in the £

The gross equivalent of this dividend is therefore $\frac{20}{18/6} \times £185 = £200$. Accordingly the agent pays the dividend as follows:—

Amount of Dividend declared	£185	0	0
<i>Less</i> United Kingdom Income Tax at 3/6 in the £ on the Gross Amount of the Dividend £200		35	0 0
Net Amount	£150	0	0

In the above illustration, the rate of tax to be deducted is arrived at as follows —

	s.	d.
Standard rate	5	0
<i>Less</i> Dominion rate	1	6
	3	6

If the agent had been unable to agree the relief, he would have deducted tax at the standard rate —

Amount of dividend declared	£185	0	0
<i>Less</i> United Kingdom tax at 5/- ..		46	5 0
	£138	15	0

In the first case, the taxpayer arrives at the gross dividend by grossing up at the standard rate, viz., $\frac{20}{15} \times £150 = £200$. In the latter case he first grosses up at the standard rate, viz., $\frac{20}{15} \times £138\ 15s.\ 6d. = £185$, and then by reference to the Dominion

rate ultimately agreed, viz, $\text{£}185 \times \frac{20}{18\frac{2}{3}} = \text{£}200$. The latter addition, $\text{£}15$, the Dominion tax suffered, has not borne United Kingdom tax, and is therefore assessable under Case VI, Schedule D.

If the taxpayer is married and has other taxed income of $\text{£}625$ his computation in the second case is as follows:—

Dominion Income, Gross..	..	..	£200	0	0
Other Income	..	..	625	0	0
			<hr/>		
			825	0	0
Less Personal Allowance	..	..	150	0	0
			<hr/>		
Taxable Income..	..	..	£675	0	0
Chargeable—					
£175 @ 2/6	..	..	£21	17	6
500 @ 5/-	..	..	125	0	0
			<hr/>		
			146	17	6
(Appropriate rate $\text{£}146\ 17s\ 6d - 675 = 1/4\frac{1}{2}$)					
Less Dominion Tax Relief $\text{£}200 @ 1/6$			15	0	0
			<hr/>		
			131	17	6
Less Tax deducted at source—					
Dominion Income,					
£185 @ 5/- =	£46	5	0		
Other Income, £625					
@ 5/ .. =	156	5	0		
			<hr/>		
			202	10	0
			<hr/>		
Tax Repayable ..	..	..	£70	12	6
			<hr/>		
His claim is made up of—					
Personal Allowance $\text{£}150 @ 5/-$	∴		£37	10	0
Reduced Rate Allowance $\text{£}175 @ 2/6$	..		21	17	6
			<hr/>		
			59	7	6
Dominion Income Tax Relief—					
£200 @ 1/6 =	£15	0	0		
Less Tax payable thereon					
under Case VI, $\text{£}15 @ 5/-$	3	15	0		
			<hr/>		
			11	5	0
			<hr/>		
			£70	12	6
			<hr/>		

§ 11.—Adjustment on first £175 of Taxable Income where excessive relief obtained.

Where a company has obtained Dominion Income Tax relief, and also where a paying agent has agreed the relief with the Special Commissioners, the dividends are paid to shareholders under deduction of tax at a rate reduced by relief calculated with reference to the standard rate of United Kingdom Income Tax. This rate of Dominion Income Tax relief may be lower than that to which the taxpayer is entitled, and he may, therefore, be able to claim additional relief by reference to half his personal appropriate rate. On the other hand, the relief may be greater than half the taxpayer's appropriate rate, in which case he has obtained more relief than he is entitled to. A provision to rectify this is found in sub-section (3) of § 27 (1920), and § 10 (1930), to the effect that where excessive relief has been allowed, an adjustment shall be made by restricting the relief due in respect of the first £175 of taxable income.

It must be remembered that where an adjustment arises under this heading in respect of dividends received from a paying agent for a Dominion company, the paying agent has grossed the dividend and deducted tax therefrom at the reduced rate. Therefore, the gross dividend falls to be amended by reference to the taxpayer's appropriate rate, and the tax overcharged must be dealt with.

Illustration.

A taxpayer had a total income of £435 (gross), all taxed at source, including £200 Dominion dividend taxed at 2/-. relief passed on as explained in the preceding paragraph (first example) He was a single man.

DOMINION INCOME TAX RELIEF. 403

COMPUTATION.

Dominion Income	£200
Other do.	235
	<hr/>
	435
Less Personal allowance ..	100
	<hr/>
Taxable Income	£335
	<hr/>
Chargeable—	
£175 @ 2/6	£21 17 6
160 @ 5/-	40 0 0
	<hr/>
	61 17 6
(Appropriate rate £61 17s 6d — 335 = 3 7/8%)	
Less Dominion Tax Relief—	
£200 at 1/10 1/4 (half U K. rate) ..	18 8 9
	<hr/>
	43 8 9
Less Tax suffered at source—	
£200 @ 3/-	£30 0 0
235 @ 5/-	58 15 0
	<hr/>
	88 15 0
	<hr/>
Tax Repayable	£45 6 3
	<hr/>
This would be computed as follows :—	
Personal Allowance—£100 @ 5/- ..	£25 0 0
Reduced Rate Relief—	
£175 0 0 @ 2/6	
Less 12 10 0 @ 2/6	
£162 10 0 @ 2/6	20 6 3
	<hr/>
	£45 6 3
	<hr/>

The restriction in the reduced rate relief is calculated as follows.—

Excess Dominion Relief = 2/- minus $1/10\frac{1}{8}$ = $1\frac{7}{8}$ d. in £.

£200 @ $1\frac{7}{8}$ d. = £1 11s. 3d. = 2/6 in £ on £12 10s. 0d.

NOTE.—Students are advised not to worry about this method of giving effect to the relief as the first method is simpler and arrives at the same result.

§ 12.—Dividends declared out of Profits taxed in more than one Dominion.

A company controlled here, being assessed on the whole of its profits, frequently derives part of its income from Dominion sources and bears Dominion Income Tax thereon. Relief is applied for in the usual manner, and must be passed on to the shareholders by the company deducting tax at a reduced rate (§ 27 (5)). We have already seen that a shareholder may in this manner receive too much or too little relief, and the steps taken to rectify this position ; and it is hardly necessary to point out that such adjustments cannot arise where the shareholder is other than an individual, *e.g.*, in the case of a limited company, where the appropriate rate is the standard rate of Income Tax.

Where the profits of a Dominion company have suffered tax in more than one Dominion at varying rates, and a shareholder in this country desires to claim the relief to which he is entitled, the dividend must be regarded as having been paid proportionately out of the various parts of the company's profits. In this manner certain parts of the dividend may not have borne Dominion tax, while other parts have been liable thereto at widely differing rates. Having ascertained the rates applicable to each part of the dividend, relief is calculated as if each separate part were a distinct dividend to be grossed at the particular rate.

Illustration.

A. Ltd. had a total income for assessment in 1932-33 of			
£15,000, made up of United Kingdom Income			£8,000
	Dominion A.	do.	£3,000
	do.	B.	do.
			£4,000

The appropriate rate of Dominion tax was found to be, in A. 2/-, in B. 3/6.

Since A. Ltd. has an appropriate United Kingdom rate of 5/-, being the standard rate, half thereof is 2/6. Relief is therefore due to the company in respect of Dominion A income at 2/- and Dominion B income at 2/6.

Assessment—£15,000 at 5/-	..	..	..	£3,750
Less Dominion Tax Relief :—				
A.—£3,000 @ 2/-	..	..	£300	
B.— 4,000 @ 2/6	..	..	500	
			— —	800
Net tax suffered	..	..	..	<u>£2,950</u>

The rate of tax to be deducted from dividends is therefore—

$$\frac{\text{£} 2,950}{15,000} = 38 \text{ } 11 \text{ } 2\text{d.}$$

The company is bound, by § 27 (5), 1920, to pass on to its members the relief, i.e. $\frac{15,000}{15,000} = 18 \text{ } 0 \text{ } 8\text{d}$ in the £. This will be shown on the dividend warrant as United Kingdom rate $\frac{s. \text{ } d.}{5 \text{ } 0}$

Less Dominion Tax Relief 1 0 8

Rate of Tax deducted .. 3 11 2

* Shareholders, whose appropriate rate differs from that of the company, must ascertain (through the Inspector of Taxes) what proportions of the dividend are available for relief.

In this case $\frac{15,000}{15,000} = 20\%$ has been taxed in Dominion A.

and $\frac{4,000}{15,000} = 26\frac{2}{3}\%$ " " " " " B.

A shareholder in A. Ltd. had the following income for 1932-33—

Dividends from A. Ltd., Net Amount	..	£482
Business profits, 1931	.. ..	1,200
Interest on Loans and Mortgages	..	800

His statutory total income for 1931-32 was £5,000.

He is married, with three children under 16, and pays £120 per annum premium on a life assurance policy taken out in 1910.

INCOME TAX.

A.'s COMPUTATION 1932-33.

Business Profits	..	..	..	£1,200
Interest on Loans, etc.	..	..	..	800
Dividends, ²⁰ _{16/0·8}	482	..	..	600
Sur-tax, 1931-32—				
£2,000 ..	Nil.			2,600
500 @ 1/0 ..	£25 0 0			
500 @ 1/3 ..	✓ 31 5 0			
1,000 @ 2/0 ..	100 0 0			
1,000 @ 3/0 ..	150 0 0			
	£306 5 0			520
Add 10%	30 12 6			£2,080

£336 17 6

$$\checkmark \text{£} \frac{336 \ 17 \ 6}{5000} = 1/4\frac{1}{4}$$

Chargeable—

£175 @ 2/6 £21 17 6

1,905 @ 5/- 476 5 0

£498 2 6

$$\begin{aligned} \text{(Appropriate Rate)} &= \text{£} \frac{498 \ 2 \ 6}{2080} = 4/9\frac{1}{2} \\ \text{plus Sur-tax rate} &\quad \quad \quad \frac{1/4\frac{1}{4}}{6/1\frac{1}{4}} \end{aligned}$$

Less Life Assurance Relief—

£120 @ 5/- 30 0 0

468 2 6

Less Dominion Tax Relief—

re Dominion A on 20% of

Dividend = £120 @ 2/0 .. £12 0 0

re Dominion B on 26 $\frac{2}{3}$ % ofDividend = £160 @ 3/0 $\frac{3}{4}$.. 24 10 0

36 10 0

431 12 6

Less Tax deducted at source—

✓ £800 @ 5/- £200 0 0

600 @ 3/11·2 118 0 0

318 0 0

Tax payable .. £113 12 6

The additional Dominion tax relief in respect of the portion of the dividend paid out of income from Dominion B would probably be adjusted in the second instalment, Case I, Schedule D. The company has passed on relief at 2/6 on £160, the taxpayer is entitled to relief at 3/0 $\frac{3}{4}$, half his appropriate rate being less than the Dominion rate.

Business Profits	£1,200
<i>Deduct Allowances</i>	520
	<hr/>
	£680
	<hr/>
£175 @ 2/6	£21 17 6
505 @ 5/-	126 5 0
	148 2 6
<i>Less Assurance Relief</i>	30 0 0
	<hr/>
	£118 2 6
	<hr/>
1st Instalment, payable 1st January, 1933 ..	£88 11 11
2nd " " 1st July,	
1933	£29 10 7
<i>Less Additional Dominion</i>	
<i>Tax Relief, £160 @ 6$\frac{3}{4}$d.</i>	4 10 0
	<hr/>
	25 0 7
	<hr/>
	£113 12 6

§ 13.—Dividends declared “free of tax.”

The principle to be adopted when dealing with “tax free” dividends from a British company, which has obtained relief in respect of the payment of Dominion Income Tax, is only slightly different from that involved when dealing with dividends free of tax at the standard rate. It is necessary to ascertain the reduced rate of tax the company would have deducted from a gross dividend, and “gross” the free of tax dividend accordingly by reference to that rate. (This must not be confused with dividends

from companies abroad, paid through a paying agent here; in that case, the net dividend will be grossed at the standard rate, if relief has been passed on; * or at the standard rate, and the result in turn grossed at the dominion rate, if relief has not been passed on (*see* § 10 *ante*)).

Illustration.

A shareholder received a tax-free dividend, £255, from a British company, and ascertains that the company's rate of United Kingdom Income Tax is 3s. 0d., being the standard rate of 5s. 0d., less Dominion Income Tax relief 2s. 0d. in the £.

For the purpose of any statement of total income, the gross dividend is £300, which is ascertained by treating each 17s. 0d. of net dividend as representing £1 of gross dividend, *i.e.*, by adding three-seventeenths of the net dividend.

§ 14.—Partnerships.

Particular care is necessary when dealing with the affairs of a partnership, since the assessment in this country is the aggregate assessments of the individual partners. For the purpose of a Dominion Income Tax relief claim the assessment on the partnership must first be apportioned between the partners in accordance with the provisions of § 20 of the Income Tax Act, 1918, and the share of the assessment, and of the duty ascertained. By taking also each partner's income outside the firm, and sur-tax where necessary, the appropriate rate applicable to the several partners may be computed, and relief claimed accordingly.

Similar treatment may be needed in computing the Dominion rate, in the event of the Dominion tax being charged at varying rates, or after differing allowances to the individual partners.

§ 15.—Effect of Charges on Income.

It has been pointed out that where there are annual charges, such as mortgage interest from which the payer deducts United Kingdom Income Tax, the annual sums must be kept in charge at the full rate of tax, and the tax deducted accounted for to the Inland Revenue. Where Dominion Income Tax has been paid, no relief is allowed on the part of the assessment representing the annual charges, as this would reduce the tax thereon to less than that deducted at the time of payment.

But the decision in *C.I.R. v. Dalgety & Co.* ((1930), 15 T.C. 216) should be noted. There, a company which was incorporated and controlled in England earned practically the whole of its income by trading operations in Australia and New Zealand, and it was assessed in respect of these profits to both United Kingdom and Dominion Income Tax. Out of the trading profits when received in the United Kingdom certain debenture interest, from which the company had deducted United Kingdom Income Tax, was paid. It was held by the House of Lords that the company was entitled to relief in respect of the whole income of the Dominions and was not obliged to subtract therefrom the amount paid in debenture interest, as the words "income" and "paid" contained in the relevant sections could not be construed as meaning respectively "income after deducting all charges made upon it" and "paid and ultimately borne," but must be given their "natural and ordinary meaning." In practice, effect is given to this decision only where the facts are exactly the same as those in the case.

Where the annual charges are allowed as deductions in the Dominion, the sum applied in paying such charges is not eligible for relief, as no double taxation has been suffered thereon (*Assam Railways and Trading Co. v. C.I.R.* (1933), 12 T.C. 123).

A further point arises where the taxable income includes income not subject to Dominion tax, or alternatively liable to Dominion tax at varying rates. In such cases, the charges are set first against income not liable to Dominion tax, or against income subject to Dominion tax at the lowest rate.

§ 16.—**Sur-Tax.**

Reference has been made previously to the inclusion of the sur-tax rate in computing the appropriate rate of United Kingdom Income Tax, but it must clearly be understood that the relief claimable is a relief from Income Tax (*i.e.*, the “standard rate” portion) only. Thus the first consideration must be whether or not there is liability to United Kingdom Income Tax for the fiscal year for which it is wished to prefer a claim, and it is only a secondary point whether in the same year of assessment the taxpayer is liable to pay sur-tax (for the preceding year) in respect of the particular source of Dominion income. Therefore, as a fixed rule, it may be taken that where there is no United Kingdom Income Tax assessment in respect of the Dominion source, there is no title to relief in respect of any Dominion tax paid or payable.

§ 17.—**Concession where no Dominion Tax owing to different basis.**

In any year where there is a Dominion profit included in the assessment to United Kingdom Income Tax,

but owing to the Dominion assessment being calculated by reference to a different period (for which there may have been a loss) no Dominion tax is charged for the corresponding Dominion year of assessment, relief may be applied for as a concession where there is a title in equity. If the submission is granted by the Inland Revenue authorities, the relief is generally allowed at the minimum flat rate of Dominion tax prevailing for the period. Each case must be considered on its own merits, and the authorities review the whole position from the first year in which Dominion Income Tax relief was granted in the particular case.

✓ § 18.—Dominion Income Tax Relief on Preference Dividends.

Where a British company has obtained Dominion Income Tax relief, the appropriate rate of United Kingdom tax is not the standard rate, but that rate reduced by the relief obtained. Subsection (5) of § 27 provides that the company shall deduct tax from dividends at the reduced rate, thus passing on the relief to the shareholders.

It was held by the Court of Appeal in *Sheldrick v. South African Breweries, Ltd.* (1923), 1 K.B. 173, that sub-section (5) of § 27 applies to all dividends, and not merely to dividends payable to ordinary shareholders. This means, in effect, that the preference shareholders actually receive a higher net dividend than their contract entitles them to.

The treatment of preference dividends received from a Dominion company requires special consideration in the light of the Board of Inland Revenue's view that in the case of non-participating preference shares carrying a fixed rate of dividend, no relief is due

where the full rate of dividend has been paid, unless there is a special deduction of Dominion Income Tax from the dividends. This applies to a number of Canadian companies, and apparently it is argued that by grossing the fixed dividend by reference to the company's rate of Dominion Income Tax, and charging tax in the United Kingdom at the standard rate reduced by Dominion Income Tax relief, the shareholder is left in a better position than the terms of issue contemplated.

Illustration.

A Canadian company pays to a British shareholder the full dividend on his holding of non-participating preference shares, and his bankers deduct tax so that he receives £90, less tax @ 5s. 0d. = £67 10s. 0d.

If a claim for Dominion Income Tax relief were allowed, on the assumption that the Canadian company's rate was 2s. 0d. in the £, the gross dividend would be $£90 \times \frac{7}{5} = £100$, on which United Kingdom tax at 3s. 0d. in the £ would be chargeable; the net benefit being £85 against the previous £67 10s. 0d.

§ 19.—Non-Reciprocating Dominions.

Where under the laws in force in any Dominion no provision is made for the allowance of relief from Dominion Income Tax in respect of the payment of United Kingdom Income Tax, then in assessing or charging Income Tax in the United Kingdom in respect of income assessed or charged to Income Tax in that Dominion a deduction shall be allowed in estimating income for the purpose of United Kingdom Income Tax of an amount equal to the difference between the amount of the Dominion Income Tax paid or payable in respect of the income and the total amount of the relief granted from the United Kingdom Income Tax in respect of the Dominion Income Tax for the period on the income of which the assessment or charge to

United Kingdom Income Tax is computed (§ 27 (4) (b), 1920).

Difficulty is frequently encountered in applying this part of the legislation where the United Kingdom liability is based on the income of the year of assessment. It will be noted that the relief due, and consequently the addition for Dominion Income Tax, as reduced by the above proviso, cannot be ascertained unless the taxpayer's taxable income is known, but that in arriving at the taxable income the deduction under the above proviso must be considered.

To overcome this difficulty, a method has arisen in practice whereby the taxpayer's appropriate rate can be computed by taking an approximate allowance under the proviso. The amount added to the net Dominion income is calculated on the assumption that the relief obtainable is one-half of the standard rate of income, to which is added one-half of the effective rate of sur-tax (which is capable of ascertainment, being based on the preceding year's income for Income Tax purposes). Where the estimated rate is greater than the Dominion rate, the latter rate is used instead.

Illustration.

A taxpayer with other income, £480, received from a non-reciprocating Dominion net income, £2,090, which had suffered Dominion Income Tax at 4s. 0d. in the £. For the same year his effective rate of sur-tax was 8d., and the standard rate of income tax 5s. 0d. The approximate relief is thus taken at 2s. 10d. in the £, and the estimated appropriated rate computed as follows.—

Other Income	..	..	..	£480
Dominion Income (Net)	..	..	..	2,090
			2/10	
Add Tax thereon £2,090	×			
			17/2	
				345
				<hr/>
				£2,915
Personal Allowance	..	..	..	100
				<hr/>
Taxable Income	..	..	..	£2,815

Chargeable—

£175 @ 2/6 in the £	..	..	£21 17 6
2,640 @ 5/- in the £	..	..	660 0 0
			<hr/>
			£681 17 6

Appropriate Rate—Sur-tax, 8d., plus Income Tax—

£681 17 6	
-	= 4s. 10d.

£2,815

Total .. 5s. 6d. Half = 2s. 9d.

Having reached this point, proceed as if the appropriate rate obtained were the true rate, using in the computation half the appropriate rate obtained or the Dominion rate, whichever is the less. The estimated rate first used is obviously never less than the true appropriate rate, as the maximum income tax rate is assumed, whereas the personal allowance must reduce the rate even though it may only be fractionally. The result, however, never operates to the disadvantage of the taxpayer, and avoids the more tedious method of trial.

Other Income	..	..	£480
Dominion Income (Net)	..	..	2,090
			2s. 9d.
Add Tax thereon £2,090 ×			<hr/>
			17s. 3d.

£2,903

Less Personal Allowance 100

Final Taxable Income £2,803

Chargeable—

£175 @ 2/6	..	..	£21 17 6
2,628 @ 5/-	..	..	657 0 0
			<hr/>
			£678 17 6

Appropriate Rate—

Sur-tax 8d.

678 17s. 6d.	
-	= 4s. 10d.

2,803

Total 5s. 6d.

Dominion Income Tax Relief—

£2,423 @ 2/9 333 * 3 3

Tax payable £345 14 3

It is only in the early years of holding a source that the above complications normally arise, as such Dominion income assessed thereafter on the preceding year basis is "grossed" by reference to the relief given in the preceding year.

Where British tax is deducted, the method of computation is as shown in the next illustration.

Illustration.

For the year 1932-33 Mr. James Brown's final appropriate rate of British tax (including sur-tax) was 5s. 6d.

He received a cheque for £875 from Neardone Gold Mines, Limited. A copy of the dividend warrant counterfoil is shown below.

The rate of South African tax borne by this company was 3s. in the £ in respect of the whole of its profits.

There is no reciprocal relief in South Africa.

Calculate the net further Dominion Income Tax relief due to Mr. Brown.

NEARDONE GOLD MINES, LIMITED.

(Incorporated in the Union of South Africa.)

1st August, 1932.

Dividend No. 6 of 2s. per share less British Income Tax at the rate of 2s. 6d. per £ on Gross Dividend on 10,000 shares.

Amount of Warrant £875.	Amount of Dividend	s. d.
	declared per share	.. 2 0
	<i>Less</i> British Income Tax	
	at 2s. 6d in the £ on the	
	Gross Amount of the	
	Dividend, viz., 2s. 3·43d.	3·43

Net Amount .. 1 8·57

We certify that the British Income Tax deducted from this dividend will be paid to the proper Officer for the receipt of tax.

A. PAYER & Co., *London Secretaries.*

A.—*Correct Solution.*

NEARDONE GOLD MINES, LIMITED.

Mr. Brown's appropriate rate of tax is 5s. 6d.

Therefore half his appropriate rate of tax is 2s. 9d.

Since South Africa is not a reciprocating Dominion, the rate at which the net dividend has to be "grossed" up is not 3s. (the rate of Dominion tax suffered) but only 2s. 9d., the rate at which relief is obtainable.

Net Dividend, £875 $\times \frac{20}{17\frac{1}{6}}$.. £1,000 0 0

Gross dividend by reference to 2s. 9d. the rate of relief allowable—
20

$$1,000 \times \frac{20}{17\frac{1}{6}} = £1,159 \ 8 \ 5$$

Dominion Income Tax Relief due, £1,159 8s. 5d. at 2s. 9d. £159 8 5

Less. £1,142 16s. 0d. at 2/6 (A) .. £142 16 0

£16 12s. 5d. at 5s. (B) .. 4 3 1

— — — — — 146 19 1

Net Tax repayable £12 9 4

(A) = Relief already allowed. $10,000 \times 2s. 3\frac{1}{2}d. = £1,142 \ 16s. 0d.$

(B) = Additional amount of dividend which has borne no tax due to revised grossing up.

B.—⁴Alternative Solution

NEARDONE GOLD MINES, LIMITED.

One half of Mr. Brown's appropriate rate of British tax is 2s. 9d., which is less than the Dominion rate of tax suffered, viz., 3s.

He is therefore entitled to Dominion Income Tax relief at 2s. 9d.

Net amount of dividend declared per share (after

deduction of South African tax at 3s.) .. £1,000 0 0

Gross by reference to rate of relief allowable (2s. 9d.) 159 8 5

Gross Dividend .. £1,159 8 5

His correct liability is—

Gross Dividend, £1,159 8s. 5d. at 5s. £289 17 1

Less : Dominion Income Tax relief, £1,159 8s. 5d.

at 2s. 9d. 159 8 5

Income tax payable .. 130 8 8

Income tax suffered by deduction $10,000 \times 3\frac{1}{2}d.$ 142 18 0

Repayment due £12 9 4

§ 20.—Income arising in India.

The position of Indian income has to be considered together with claims to Indian Income Tax refunds. Indian debenture interest has specific deductions for Indian Income Tax, but, generally speaking, dividends are paid free of tax. The appropriate addition must therefore be made in order to arrive at the gross Indian income. The total income so obtained fixes the taxpayer's rate of Indian Income Tax, and, if less than Rs. 40,000, entitles him to claim a certain refund in India.

For United Kingdom purposes Indian companies' super-tax must be considered also, the Dominion rate covering super-tax and Income Tax as reduced by the refund allowed. In this connection it is well to remember that even where the Indian claim is not lodged the authorities in this country generally compute the rate of Dominion tax as if the claim had been submitted and allowed. Therefore, it behoves the taxpayer carefully to watch his interests.

Illustration.

A taxpayer's total income was derived from Indian industrial shares, and during the year to 5th April, 1932, amounted to Rs. 16,000 which was remitted @ Ex. 1/6, producing £1,200 sterling. The income had suffered Indian Income Tax at 29½ pies.

The claim in India is for a refund of 11½ pies in the rupee on Rs. 18,876 ($\text{Rs. } 16,000 \times \frac{113\frac{1}{2}}{100}$) as incomes between Rs. 15,000 and Rs. 20,000 are subject to 18 pies Income Tax. This leaves Indian Tax suffered at the rate of 18 pies (= 1s. 10½d.) in respect of which relief is claimed in this country for 1932-33 on the following basis :—

INCOME TAX.

Indian Income—Rs. 18,876 @ 1/6 =		£1,416
Less Personal Allowance	100	
Taxable Income		<u>£1,316</u>
£175 @ 2/6 =	£21 17 6	
1,141 @ 5/- =	285 5 0	
Gross Duty		<u>£307 2 6</u>
(Appropriate rate 4/8)		
Less Dominion		
Income Tax		
Relief £1,316		
@ 1/10½	123 7 6	
Net Duty		<u>£183 15 0</u>

§ 21.—Agreement with Irish Free State.

As a result of the agreement concluded on 14th April, 1926, and the amending agreement concluded on 25th April, 1928, between the Governments of Great Britain (including Northern Ireland) and the Irish Free State, provision is made for reciprocal exemption for 1926-27 onwards (the amendments for 1928-29 onwards) from Income Tax and Sur-tax in the case of persons resident in one of the countries and not in the other, and for reciprocal relief to persons resident in both countries. This agreement was confirmed by § 23—1926, and the amending agreement by § 21—1928. Broadly speaking, the position is that a person resident in the Irish Free State, and not resident in Great Britain and Northern Ireland, is exempted from United Kingdom tax in respect of property situate and profits arising in Great Britain and Northern Ireland. In the same manner, exemption from Irish Free State tax is granted in respect of income arising in the Irish Free State to a resident in Great Britain and Northern Ireland. A

person so exempted in one country must include all his income arising in that country in his return for the purposes of taxation in the country in which he is resident.

In the case of persons resident in both countries the exemption does not operate, but the taxpayer is able to claim relief in both countries on the doubly taxed income at half the lower of the two effective rates.

Following the usual rule, in the case of partnerships, each partner must be treated separately. It may be that one partner is resident in England, another in the Free State, and the third in both. In that case, the first is exempt in the Free State, the second in Great Britain, and the third is liable but gets relief in both.

For the purposes of the agreement a company, no matter where it is incorporated, is deemed to be resident in that country only in which its business is managed and controlled.

A conjoint office has been set up at York House, 23, Kingsway, W.C.2, to deal with matters arising, and to accept returns with a view to ascertaining the net tax payable.

The following important modifications of the Income Tax Acts are incorporated in the Second Schedule, Part II, Finance Act, 1926, for the purpose of giving effect to the agreements :—

In respect of property situate and profits or gains arising in the Irish Free State, the Rules of Cases IV and V, Schedule D, are amended, with the result that income accruing to a person resident in Great Britain and Northern Ireland from Irish Free State securities and possessions, is to be assessed as follows :—

Securities. On the full amount of the income arising in the year of assessment.

Stocks, Shares and Rents. On the full amount arising in the year of assessment. Where land or buildings in the Irish Free State are occupied by a person resident in Great Britain or Northern Ireland, the net annual value for Schedule A in the Irish Free State, and the Irish Free State Schedule B assessments are to be taken as the income, otherwise the rent is the appropriate income.

Possessions other than Stocks, Shares and Rents. On the same basis as that on which the income would have been computed if the income had arisen in Great Britain or Northern Ireland, subject to a deduction on account of any annual interest, etc., payable out of the income to a person not resident in Great Britain or Northern Ireland. In computing the profits of a trade, business, profession or vocation, an amount equal to the amount charged under Case V in respect of land or buildings used for the purpose of the business shall be allowed as a deduction. Claims must be made to the Commissioners of Inland Revenue. Appeals against their decision may be made to the Special Commissioners within twenty-one days of the notice of the decision being given to the taxpayer.

A paying agent paying to persons in Great Britain and Northern Ireland, dividends, etc., out of the public revenue of the Irish Free State or out of or in respect of any stocks, shares, etc., of any Irish Free State company, society, etc., need not deduct United Kingdom Income Tax, provided he furnishes to the Commissioners of Inland Revenue full details of the interest, dividends, etc., the name and address of each payee, and the amount to which each payee is entitled. If the payment is one which would have come under Schedule C, the paying agent is entitled to the same remuneration as if he had deducted tax.

The interest, dividends, etc., referred to in the last preceding paragraph will be assessed under Case IV or V, as the case may be.

The rate of relief in the case of persons resident in both countries is one-half of the person's appropriate rate of British Income Tax, or one-half of his appropriate rate of Irish Free State tax, whichever is the lower.

The appropriate rate of British Income Tax is found by dividing the amount of tax payable by him for that year (before deducting insurance relief or Dominion or Irish Free State relief) by the amount of his *total statutory* income for that year, and adding (if he is also liable to sur-tax) the rate ascertained by dividing the amount of British sur-tax payable for the *same* year by the total statutory income for that year.

The appropriate rate of Irish Free State Tax is similarly computed (the Irish Free State Income Tax Acts being very similar to those of the United Kingdom).

In the case of persons paying sur-tax, the relief is given in two parts: that in respect of Income Tax proper being given against Income Tax proper; that in respect of sur-tax being given against sur-tax.

For purposes of reference, the Irish Free State rates of tax and allowances are given in Appendix VII.

Illustrations.

(1) A. is resident in Great Britain only, but has several sources of income in the Irish Free State. He pays in the Irish Free State ground rent of £40 and mortgage interest of £90.

A. is entitled to have his Irish Free State assessments discharged, and to be repaid the Income Tax deducted from his income taxed at source, but must keep sufficient in charge to cover the tax he deducts from the ground rent and mortgage interest.

The whole of his Irish Free State income, less annual charges paid in the Irish Free State, must be entered in his British return, and be charged to tax in Great Britain.

(2) Had the words "Great Britain" and "Irish Free State" been reversed throughout in the above example, it would be equally accurate.

(3) B., domiciled in Great Britain, but resident both in that country and in the Irish Free State, had the following income:—

House property in Dublin, let at £200, assessed to Irish Free State, Schedule A, at £160 net.

House property in London, let at £400, assessed under Schedule A, at £420 net.

Dividends from English companies £500.

Interest on 5% War Loan, 1932-33, £1,000.

House in London, occupied under a lease, assessed under Schedule A, at £80, ground rent £20.

Share of profits from sleeping partnership in Germany, 1931-32, £1,000, of which £600 was remitted to London

Director's Fees from English company, year ended 31st March, 1932, £600, increasing by £100 per annum.

B. is married and pays to English Insurance Companies £40 per annum in life assurance premiums on policies taken out in 1929. He has three children under 16.

COMPUTATIONS, 1932-33.

	G. B. & N. I.	N. A. V.	I. F. S.
Dublin House Property—Rent	£200		£160
London House Property—Rent being less than N. A. V.	400	Rent	400
London Dwelling House—N. A. V.	£80	N. A. V.	£80
Less Ground Rent	20	Less Ground Rent	20
	60		60
Dividends—Actual Income of Year	500	Actual	500
War Loan Interest—do (Source disclosed) "	1,000	Actual	1,000
German Firm—Preceding year Remittances to U. K.	600	Remittances to I. F. S.	Nil
Directors' Fees—Preceding Year	600	Preceding year	600
<i>Statutory Total Income</i>	<u>3,360</u>		<u>2,720</u>
<i>Deduct Allowances</i>		$\frac{1}{2}$ of £450 = £75	
Earned Income . . . ('th)	120	$\frac{1}{10}$ of 150 = 15	£90
Personal	150		225
Three Children	130		150
	<u>400</u>		<u>465</u>
<i>Taxable Income</i>	<u>£2,960</u>		<u>£2,255</u>

Chargeable—			
£175 @ 2/6	..	£21 17 6	£100 @ 2/6
2 785 @ 5/-	.. ..	696 5 0	2,155 @ 5/-
		718 2 6	551 5 0
Appropriate Rate—			
£718 2 6			£551 5 0
3,360	= 4s 3 29d		2,720 = 4s. 0 61d.
Less Life Assurance Relief			
£40 @ 2/6		5 0 0	£40 @ 2/6 ..
		713 2 6	546 5 0
• Less Double Taxation Relief			
£2 760 @ 2s 0 32d		279 13 7	£2,720 @ 2s 0 32d. ..
		433 8 11	275 12 6
Tax to be borne			
			270 12 6
Add Tax on Ground Rent—			
£20 @ 5/-		5 0 0	
		438 8 11	
Less Tax suffered by deduction			
Dublin Property			£160 @ 5/-
London do £400			40 0 0
Dividends 500			
£900 @ 5/-		225 0 0	
Tax payable under Schedules A			
D and Y		£213 8 11	Tax payable under Schedule D ..
Sur-tax—			
£2,000		Nil	£1,500
500 @ 1/0		25 0 0	500 @ 6d ..
500 @ 1/3		31 5 0	720 @ 1/- ..
360 @ 2/0		36 0 0	
		92 5 0	12 10 0
		9 4 6	36 0 0
		£101 9 6	48 10 0
Appropriate Rate—			
£101 9 6			£48 10 0
3,360	= 7 25d		2,720 = 4 28d
Less Double taxation Relief—			
£2,760 @ 2 14d		24 12 2	£2,720 @ 2 14d ..
		£76 17 4	24 5 0
Sur-tax payable ..			
			£24 5 0

NOTES.

(1) The appropriate rate of relief is half the Irish Free State rate of Income Tax *plus* sur-tax, since this is less than the British rate. The relief is given in two portions as shown.

(2) The Case V assessments on *rents* should be noted.

(3) Since B. is not domiciled in the Irish Free State, he pays only on remittances in respect of the German firm. Had he been domiciled in the Irish Free State he would have been assessed on the income *arising* in the preceding year. The Irish law does not follow the British in this respect.

(4) The income from Germany is *not* doubly taxed.

§ 22.—Profits from the Business of Shipping, etc.

Reference has been made in the early part of this chapter to the deduction allowed in respect of tax paid in a foreign country, but following the war years of 1914—1918 the high foreign taxes have operated extremely harshly on businesses carrying on operations in two or more countries. (Shipping concerns were in a most unenviable position until § 18 of the Finance Act, 1923, afforded them certain relief in respect of foreign taxation.) The section provided that—

“.....if His Majesty in Council is pleased to declare—

- (a) that any profits or gains arising from the business of shipping which are chargeable to British Income Tax are also chargeable to Income Tax under the law in force in any foreign state, and
- (b) that arrangements, as specified in the declaration have been made with the Government of that foreign state with a view to the granting of relief in cases where such profits and gains are chargeable to both British Income Tax and Income Tax payable in the foreign state,

then unless, and until the declaration is revoked by His Majesty in Council the arrangements specified therein shall, so far as they relate to the relief to be granted from British Income Tax, have effect as if enacted in this Act, but only if and so long as the arrangements, so far as they relate to the relief to be granted from the Income Tax in the foreign state, have the effect of law in the foreign state. (This section was extended by § 9, Finance Act, 1931, to include profits from the business of air transport.)”

The Government of the United States of America was the first to make reciprocal arrangements complying with the provisions of § 18—1923, similar relief having been afforded by the Revenue Act, 1921. Accordingly, His Majesty made a declaration in November, 1924, exempting from 1st May, 1923, American citizens and corporations carrying on the business of shipping in this country with American ships. As part of the

agreement, the American Government in return exempted British shipping businesses from United States tax in a similar degree. Further declarations followed later with regard to Norway, Sweden, Denmark, Finland, the Netherlands, Germany, Iceland, Greece, Japan and Canada.

So far, it will be noted, the legislation referred only to Foreign Powers, and it was left to § 31 of the Finance Act, 1924, to extend the scope of these provisions to British Dominions, including British protectorates and mandated territories.

The way has been opened by § 17, Finance Act, 1930, for the conclusion of further reciprocal agreements in respect of agencies. This section reads—

17.—(1) Subject to the provisions of this section if His Majesty in Council is pleased to declare—

(a) that any profits or gains arising directly or indirectly to a person resident in any foreign state or in any part of His Majesty's dominions outside the United Kingdom through an agency in the United Kingdom or to a person resident in the United Kingdom through an agency in any foreign state or in any part of His Majesty's dominions outside the United Kingdom are chargeable both to United Kingdom Income Tax and to Income Tax payable under the law in force in that foreign state or that part of His Majesty's dominions; and

(b) that arrangements as specified in the declaration have been made with the Government concerned with a view to the granting of relief from such double taxation,

then, unless and until the declaration is revoked by His Majesty in Council, the arrangements specified therein shall, so far as they relate to the relief to be granted from United Kingdom Income Tax, have effect as if enacted in this Act, but only if and so long as the arrangements, so far as they relate to the relief to be granted from the Income Tax payable in the foreign state or in the part of His Majesty's dominions, have the effect of law in the foreign state or the part of His Majesty's dominions.

Provided that no arrangements made under this section shall exempt from United Kingdom Income Tax any profits or gains which either—

(i) arise from the sale of goods from a stock in the United Kingdom ; or

(ii) accrue to a person resident in the United Kingdom ; or

(iii) accrue to a person not resident in the United Kingdom directly or indirectly through any branch or management in the United Kingdom or through any agency in the United Kingdom where the agent has and habitually exercises a general authority to negotiate and conclude contracts.

(2) Any declaration made by His Majesty in Council under this section shall be laid before the Commons House of Parliament as soon as may be after it is made and, if an address is presented to His Majesty by that House within twenty-one days on which that House has sat next after the declaration is laid before it, praying that the declaration may be revoked, His Majesty in Council may revoke the declaration and the arrangements specified in the declaration shall thereupon cease to have effect, but without prejudice to the validity of anything previously done thereunder or to the making of a new declaration.

(3) The obligation as to secrecy imposed by any enactment with regard to Income Tax shall not prevent the disclosure to any authorised officer of the foreign state or part of His Majesty's dominions mentioned in the declaration of such facts as may be necessary to enable relief to be duly given in accordance with the arrangements specified in the declaration.

(4) In this section the expression " His Majesty's dominions " includes any territory which is under His Majesty's protection or in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by the Government of some part of His Majesty's dominions.

An agreement under § 17—1930, has been concluded with Sweden and Switzerland.

An agreement has been concluded between the United Kingdom and the Isle of Man whereby profits of branches of businesses established in the United Kingdom carrying on business in the Island are assessable only in the Island.

CHAPTER XI.

Miscellaneous.

§ 1 — CASUAL PROFITS.

2 — LIQUIDATOR'S LIABILITY FOR INCOME TAX

3 — DISCOUNT ON INCOME TAX PAID IN ADVANCE

4 — INCOME OF CLERGYMEN OR MINISTERS OF RELIGION

5 — SCHOLARSHIPS

6 — SUPERANNUATION FUNDS

7 — WAR PENSIONS

8 — UNCOMPLETED CONTRACTS

9 — REMUNERATION PAID 'FREE OF TAX'

10 — ALIMONY

11 — ANNUITIES

12 — EXECUTORS AND TRUSTEES

13 — LIFE TENANTS

14 — WIDOWS

15 — PROFITS FROM BETTING, ILLEGAL TRANSACTIONS, ETC

16 — BUILDING SOCIETIES, NEW ARRANGEMENT B (13A OF 1932)

17 — PENALTIES

18 — BACK DUTY.

CHAPTER XI.

MISCELLANEOUS.

§ 1—Casual Profits.

The question as to whether or not isolated profits, including speculation profits, are assessable to Income Tax is a matter of some difficulty, since practical experience shows that in certain cases they are not assessable, whereas in others they are assessable. It is impossible, therefore, to lay down any hard and fast rules, but each case will be determined by the Commissioners as a question of fact, according to the particular circumstances.

If it can be shown that a profit arising out of a transaction of purchase and sale is a casual one, not derived in the course of regular business this should not be assessable to tax. On the other hand, if the process is repeated sufficiently often to suggest that the person concerned is carrying on a business with a view to profit, then the Commissioners will demand that Income Tax should be paid thereon, even although the profit may be only of a temporary character.

An ordinary member of the public who occasionally indulges in Stock Exchange speculation is not expected to include speculation profits in his return, and is not allowed to deduct speculation losses. If, however, his dealings are fairly continuous, he may be regarded as an operator, and assessed accordingly. Whether an operation constitutes the carrying on of a business or simply the realisation of a capital asset is a question which depends on the facts in each case; the authorities

(i.e., decided cases), are mere illustrations of the general principle (*Spiers & Son v. Ogden* (1932), 17 T.C. at p. 125).

In the case of an isolated transaction of purchase and resale there is no middle course open ; it is either an adventure in the nature of trade, or else simply a case of sale and resale of property (*Leeming v. Jones* (1929), 15 T.C. at p. 354).

It was held in *Pearn v. Miller* (1927), 11 T.C. 610, followed by *Jones v. Leeming* (1930), 15 T.C. 333, that the difference between the cost price and the selling price of goods or property can only be taxed if the purchase and sale was a trade or adventure, or concern in the nature of trade, i.e., it cannot be taxed under Case VI. Whether a trade is being carried on is a question of fact. If the receipt is in the nature of a trade it is assessable under Case I, if not, then it will only be assessable under Case VI if it is an "annual" profit. The word "annual" is construed by the Courts to mean any profits which belong to the year of assessment, even though of a non-recurring nature.

Where a company FORMED FOR THE PURPOSE, *inter alia*, of acquiring and reselling mining property, after purchasing and working various property, resold the whole to a second company, receiving payment in fully paid shares in the latter company, it was held that the difference between the purchase price and the value of the shares for which the property was exchanged was a profit assessable to Income Tax (*Californian Copper Syndicate v. Harris* (1904), 5 T.C. 159).

If a casual receipt can be regarded as remuneration for services rendered, there is a clear case for assessment under Case II of Schedule D, and it is not

not necessary for there to be any repetition of the transaction in order to establish liability. It should be remembered, however, that whilst Case VI of Schedule D gives very wide powers of assessment to the Revenue Authorities, if a taxpayer suffers a loss in connection with a transaction, which, if it had resulted in a profit would have been liable to assessment under Case VI, he may claim to set off such loss against any profit or gain on which he is assessed under that Case, and if such profits are insufficient to enable the full loss to be set off, the balance of the loss may be carried forward and set off against any profits assessable under Case VI for any of the six succeeding years (§ 27—1927). The loss could not, however, be set off against profits assessed under any other Case or Schedule.

Commission received by directors for guaranteeing a bank overdraft of a company (*Ryall v. Hoare*, *Ryall v. Honeywill*, (1923), 8 T.C. 521; 2 K.B. 447), a bonus to a guarantor for guaranteeing a bank overdraft (*Sherwin v. Barnes* (1931), 16 T.C. 278); an isolated underwriting transaction (*Lyons v. Coucher* (1926), 10 T.C. 438); and a fee for writing memoirs in a newspaper (*Hooley v. Bladon* (1926), 6 A.T.C. 751), have been held to be "annual profits" assessable under Case VI.

§ 2.—Liquidator's Liability for Income Tax.

If a liquidator distributes the assets of a company without paying any Income Tax due, he renders himself personally liable to pay the tax, since he will be deemed to have misapplied the assets (*In re Watchmakers' Alliance and Ernest Good's Stores, Ltd.* (1905),

5 Tax Cas. 117; *re New Zealand Joint Stock Corporation* (1907), 23 T.L.R. 238).

A liquidator is responsible for the due payment of any sur-tax payable by the company in respect of undistributed profits, and for complying with any notice requiring particulars of undistributed income (§ 21—1922, and § 31—1927).

In a winding-up, sums payable to preference shareholders in respect of arrears of dividend are not subject to taxation by deduction or otherwise, being a share in the assets distributed as capital (*re Dominion Tar and Chemical Co.* (1929), 2 Ch. 387).

By the Companies Act, 1929, the Crown is a preferential creditor for one year's assessed tax up to the 5th April preceding the commencement of the winding-up or the appointment of a receiver. The assessment may actually be *made after* the 5th April *in respect of* the year up to that date, but will nevertheless be within the preferential class (*Gowers v. Walker* (1929), 15 T.C. 165). By the Bankruptcy Act, 1914, a similar preference is given in bankruptcy, 5th April prior to the date of the receiving order being the relevant date. In both cases, where several years' taxes are unpaid, the Crown is entitled to elect the largest year's liability as preferential (*re Cockell, Jackson v. Attorney-General* (1932), 16 T.C. 681).

The Bankruptcy Regulations agreed between the Board of Trade and the Inland Revenue are reproduced in Appendix VI.

§ 3.—Discount on Income Tax paid in Advance.

Where a taxpayer pays his Income Tax charged under Schedule D prior to the date when it becomes

legally due, he can, under § 159, claim a discount at the rate of $2\frac{1}{2}$ per cent. per annum on the amount paid, provided such amount corresponds with the assessment.

§ 4.—Income of Clergymen or Ministers of Religion.

A clergyman or a minister of any religious denomination is assessed under Schedule E in respect of profits, fees or emoluments of his profession or vocation, but any sum or sums paid as expenses incurred by him wholly, exclusively, and necessarily in the performance of his duty may be deducted.

He may deduct the expenses of visiting members of his congregation; expenses of attending church meetings, where such attendance is part of the duty enjoined on him by his superiors; stationery; Communion expenses; and the actual out-of-pocket expenses of providing a *locum tenens* during incapacitating illness (but not during holiday).

He may also claim an allowance in respect of such part of the rent of his house as represents the portion thereof used mainly and substantially for the purpose of his duty or function of office, not exceeding one-eighth, as the Commissioners may allow (Rule 2, General Rules).

Where rent is not paid, he is deemed to pay a rent equal to the annual value of the house, as assessed to Income Tax under Schedule A (Rule 2, General Rules).

Easter offerings are regarded as profits accruing by reason of office, and are assessable to Income Tax under Schedule E when of a voluntary character, because a rector or vicar has as such a right, at least

in theory, to have such offerings (*Blakeston v. Cooper* (1909), A.C. 104). When these offerings are of the nature of ecclesiastical dues they are assessable under Schedule A. Where a curate receives Whitsuntide offerings expressly solicited as a reward for his "devoted and earnest ministry," i.e., in respect of his work done, he is assessable thereon (*Slaney v. Starkey* (1931), 16 T.C. 45).

Where part of the emoluments of office consist of the use of a house during the term of office, the tax under Schedule A thereon falling upon the minister himself, the income represented by the Schedule A assessment will be treated as earned (§ 14 (3)).

Where a clergyman or minister of any religious denomination occupies a dwelling-house rent free by virtue of his office, in such circumstances that the annual value of the house does not fall to be regarded as part of his income, he shall be entitled, on giving notice to the Inspector, not later than 30th September in any year, or where occupation commenced after 30th June, before the expiration of three months from the date of the commencement of such occupation, to require that the annual value of such house, after deducting therefrom the amount of any annual sum payable in respect of such house, shall, for all purposes of Income Tax for that year, be treated as earned income of such clergyman or minister (Finance Act, 1919, § 22).

The expenses of removal of a curate from one place to another are not an admissible deduction from the Schedule E assessment (*Freidson v. Glyn-Thomas* (1922), 8 T.C. 302), nor will deduction be permitted for charitable subscriptions, entertaining, books, or rates, heating, etc., of residence.

§ 5.—Scholarships.

Income arising from a scholarship held by a person receiving full time instruction at a university, college, school, etc., is exempt from Income Tax and sur-tax (§ 28—1920).

§ 6.—Superannuation Funds.

The provisions regarding the exemption from Income Tax of the income of a superannuation fund, and of sums paid to such fund by an employer or by an employed person are very lengthy, and are set out in § 32, Finance Act, 1921; § 31, Finance Act, 1922, and § 19, Finance Act, 1930.

The following is a summary thereof :—

Subject to the following provisions and to any regulations made thereunder, exemption from income is allowed in respect of income derived from investments or deposits of a superannuation fund, and any sum paid by an employer or employed person by way of contribution towards a superannuation fund is, in computing profits or gains for the purpose of an assessment to Income Tax under Case I or Case II, Schedule D or under Schedule E, allowed to be deducted as an expense incurred in the year in which the sum is paid :

But—

(a) no allowance is made in respect of any contribution by an employed person which is not an ordinary annual contribution, and where a contribution by an employer is not an ordinary annual contribution, it must be treated as the Commissioners may direct, either as an expense incurred in the year in which the sum is paid

or as an expense to be spread over such period of years as the Commissioners think proper ; and

(b) no allowance is made in respect of any payments in respect of which Life Assurance Relief can be given under § 32, Income Tax Act, 1918.

Income Tax chargeable in respect of an annuity paid out of a superannuation fund to a person residing in the United Kingdom is, if the Commissioners so direct, assessed and charged on the annuitant under Case VI, Schedule D, instead of being deducted and accounted for under Rule 21, General Rules, and tax is computed on the full amount of the annuity arising in the year of assessment.

For the purposes of this section, the expression “superannuation fund ” means, unless the context otherwise requires, a fund which is approved for those purposes by the Commissioners, and the Commissioners must not approve any fund unless it is shown to their satisfaction that—

(a) the fund is a fund *bonâ fide* established under irrevocable trusts in connection with some trade or undertaking carried on in the United Kingdom by a person residing therein ;

(b) the fund has for its sole purpose the provision of annuities for all or any of the following persons in the events respectively specified, *i.e.*, for persons employed in the trade or undertaking, either on retirement at a specified age or on becoming incapacitated at some earlier age, or for the widows, children or dependents of persons who are or have been so employed, on the death of those persons (§ 19—1930) ;

(c) the employer in the trade or undertaking is a contributor to the fund ;

(d) the fund is recognised by the employer and employed persons in the trade or undertaking.

The Commissioners may, if they think fit, and subject to such conditions, if any, as they think proper to attach to the approval, approve a fund, or any part of a fund, as a superannuation fund for the purposes of this section.

(i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund ; or

(ii) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose ; or

(iii) notwithstanding that the trade or undertaking in connection with which the fund is established is carried on only partly in the United Kingdom and by a person not residing therein.

The Commissioners may make regulations generally for the purpose of carrying this section into effect and, in particular, without prejudice to the generality of the foregoing provision, may by such regulations—

(a) provide for the charging of and accounting for tax in respect of contributions (including interest) repaid to a contributor to a superannuation fund, and on lump sums paid in commutation of or in lieu of annuities payable out of a superannuation fund as if any sums so repaid or paid were income of the year in which they are repaid or paid ;

(b) require the trustees or other persons having the management of a superannuation fund, or an employer whose employees contribute to a superannuation fund, to deliver to the Commissioners such information and particulars as the Commissioners may reasonably require for the purpose of this section ;

(c) prescribe the manner in which the claims for relief under this section are to be made and approved, and in which applications for the approval of a superannuation fund are to be made ;

(d) provide for the withdrawal of approval in the case of a fund which ceases to satisfy the requirements of this section ;

(e) provide for determining what contributions to a superannuation fund are to be treated as ordinary annual contributions for the purposes of this section.

The Commissioners above mentioned are the Commissioners of Inland Revenue, and not the General or Special Commissioners (§ 32—1921).

Where, in pursuance of any public general Act of Parliament, superannuation allowances or gratuities are payable to individuals holding an office or employment on their retirement or to their legal personal representative on their death, and such individuals are by any such Act required to make contributions towards the expenses of providing the allowances and gratuities, the sums so contributed by any such individual for any year may be deducted from the amount of his emoluments to be assessed to income tax for that year :

Provided that, where any such sums are to be repaid to any individual under the authority of any such Act as aforesaid, the person by or through whom the sums are to be repaid must deduct from those sums an amount equal to the total amount of the Income Tax which would have been paid in respect of those sums if they had not been allowed as deductions under the authority of this section, and if those sums are repaid with any interest thereon must also deduct therefrom an amount equal to the total amount of the Income Tax which would have been paid in respect of that interest if it had actually been paid to the individual in the several years in respect of which it is paid, and the provisions of Rule 21 (2), General Rules, apply in regard to the accounting for and recovery of the amounts so deducted.

Any person having the custody of the books containing the assessments to Income Tax on any individual for the several years in respect of which sums are repayable to him as aforesaid, must, notwithstanding anything contained in any declaration made by the person in pursuance of section eighty-nine of the Income Tax Act, 1918, on application by the person by or through whom the sums are repayable, furnish to him such particulars as may be necessary to enable him to compute the appropriate amount of income tax to be deducted and paid over by him as aforesaid (§ 31—1922).

Regulations made under § 32—1921, are contained in S.R. & O., No. 1699, 1921. Under these rules, application for the approval of any fund or part of a fund must be made in writing before the end of the year of assessment by the trustees of the fund

to the Inspector for the district in which the office of the fund is situated or the fund administered, and must be supported by a copy of the instrument under which the fund is established and two copies of the rules and of the last accounts, and such other information as the Commissioners may reasonably require.

Any subsequent alterations in the rules, constitution, objects or conditions of the fund must be notified forthwith to the Inspector ; in default of such notification, the approval may be deemed to have been withdrawn at the date for which the alteration had effect.

The Commissioners may withdraw their approval on giving notice to the trustees. They may approve subject to conditions.

The expression “ ordinary annual contribution ” means an annual contribution of a fixed amount or an annual contribution calculated on some definite basis by reference to the earnings, contributions, or numbers of the members of the fund.

The amount of the employer's contribution which may be deducted as an expense in the case of a local authority, which is assessable to Income Tax in respect of the profits of a trade, is such portion of the authority's total contribution as is made in respect of the persons employed in such trade, and in the case of any other employer must not exceed the amount contributed by him in respect of the persons employed by him in the trade in respect of the profits of which he is assessable to United Kingdom Income Tax.

Where contributions (including any interest thereon) are repaid to the employer, the trustees must deduct tax therefrom at the rate in force for the year in which

the repayment is made. Such a repayment forms part of the recipient's total statutory income for that year. The tax so deducted is a debt due from the trustees to the Crown and recoverable from them in the same way as money in the hands of any person for stamp duty under § 2, Act of 54 and 55 Victoria, c. 38.

Where contributions (including interest, if any) are repaid to an employee during his lifetime, or where a lump sum is paid in commutation of or in lieu of an annuity, Income Tax thereon must, except in the case of an employee whose employment was carried on abroad (and in the case of a person who is a widow, child or dependent of an employed person whose employment was carried on abroad), be paid by the trustees at the rate of one-fourth (prior to 1931-32, one-third) of the standard rate for the year in which the repayment or payment is made.

Where annuities are paid to non-residents, tax must be deducted and accounted for under Rule 21, General Rules, except where the employment was carried on abroad.

The trustees or other persons managing the fund, and an employer who contributes to a fund must, within 14 days of receiving a notice requiring them, furnish to the Inspector—

(a) a return containing such particulars of contributions as the notice may require ;

(b) a return of the name and residence of every annuitant ; the amount of the annuity ; particulars of contributions (and interest thereon, if any) returned to employer or employee, and of sums paid in commutation or in lieu of annuities.

(c) a copy of the last accounts of the fund and such other information and particulars as the Commissioners may reasonably require.

Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contribution of that employee to the fund, details of the deduction or payment must be included in the Employer's Return of Wages and Salaries under § 105.

The trustees can claim relief in respect of income from investments or deposits of the fund, and any tax for which they are required to account may be set off in the settlement of such claim.

If the fund or part of a fund ceases to be an approved fund, the trustees remain liable to account for tax on sums repaid, or paid in commutation of annuities, in so far as the sum so paid is in respect of contributions made before the fund ceased to be an approved fund.

§ 7.—War Pensions.

Income from wounds and disability pensions is exempted from Income Tax (including sur-tax) (§ 16—1919); also allowances to war widows in respect of children (§ 27—1922). No exemption is given in respect of pensions payable to war widows in their own right.

§ 8.—Uncompleted Contracts.

In businesses where uncompleted contracts are a feature of trading, *e.g.*, builders, hire purchase traders, credit drapers, etc., the taxpayer and the Inspector of Taxes do not always see “eye to eye” regarding

the method of evaluating the outstanding portions of contracts. Each case must be treated on its own merits, but, in general terms, if the accounting system follows proper principles, there should be little difficulty in convincing the Inspector of the fairness of the method adopted. In hire purchase transactions, the nature of the articles sold normally determines the method of accounting. Any good treatise on Book-keeping and Accounts can be consulted on this point.

The credit drapers have come to an agreement with the Inland Revenue Authorities as to the method of evaluating the outstanding debts. A copy of the agreement can be obtained from the Inspector of Taxes who deals with the case in which any reader may be interested.

It is only where the taxpayer seeks to make a general percentage reserve for uncompleted contracts that serious disputes must inevitably and rightly arise.

, § 9.—Remuneration paid “free of tax.”

In many instances the Articles of Association, resolutions of shareholders, or specific agreements enable the directors to draw their remuneration free of tax. Many large corporations pay the salaries of their staff under a similar agreement. (In such cases, the remuneration liable to tax is the gross sum arrived at by adding to the actual amount paid to the director or employee in the year, the amount of tax paid to the Inland Revenue Authorities in the same year in respect of his remuneration.)

In the first two or three years, the computation of the tax may be somewhat involved, but thereafter it is perfectly straightforward, since tax is payable upon the previous year's remuneration.

The question as to the treatment of allowances is purely one of agreement between employer and employee. In some cases the employer may take the benefit of the allowances, in other cases the employee, whilst sometimes the allowances will be apportioned between them.

The scheme most usually adopted is to treat the individual as a single man, and for the employer to take the benefit of his allowances as such, leaving him to reclaim tax on any additional allowances to which he may be entitled.

Illustration.

On 1st August, 1930, A. was elected a director of A. B. Ltd. Under the terms of his appointment, his fees were payable "free of tax," his allowances being taken by the company to the extent that they would apply to a single man. A. was married with two children under 16. His fees were as follows.—

1st August, 1930, to 5th April, 1931	..	£600
Year ending 5th April, 1932	..	£1,200

The assessments under Schedule E would be :—

1930-31	£600 plus the tax paid by the company for	1929-30.
1931-32	£1,200 do.	do.
1932-33	£1,200 (being the preceding year's Income) plus the Tax paid by the company in	1930-31 (the preceding year).

It is apparent therefore that only for the first two assessments is it necessary to compute the tax on the income for the year of assessment, thereafter (unless a claim for reduction to the actual income arises in 1932-33) the preceding year's tax is adopted.

COMPUTATIONS.

Let the tax payable by the Company = T.

	1930-31.	1931-32.
Actual amount paid ..	£600	£1,200
Add Tax.. ..	T	T
	<hr/>	<hr/>
	600 + T	£1,200 + T

Deduct Allowances—

Earned Income $\frac{1}{2}(600 + T)$	$\frac{1}{2}(1,200 + T)$
Personal .. 135	100
	$\frac{1}{2}T$
	$\frac{1}{2}T$
Taxable Income	£365 + $\frac{1}{2}T$

Chargeable—

£250 @ 2/-	£25 0 0	£175 @ 2/6	£21 17 6
$\frac{1}{2}T + £115 @ 4/6 ..$	$\frac{1}{6}T + 25 17 6$	$£685 + \frac{1}{2}T @ 5/- ..$	$\frac{1}{2}T + 171 5 0$
	$T = \frac{1}{6}T + £50 17 6$		$T = \frac{1}{2}T + £193 2 6$
$\therefore 240T = 45T + 12210.$		$\therefore 5T = T + £965 12 6$	
$\therefore 195T = 12210.$		$\therefore 4T = £965 12 6$	
$\therefore T = £62 614 = £62 12 3$		$\therefore T =$	£241 8 2

A. can claim repayment on :—

Balance of Personal	£	s	d.		£	s	d.
Allowance £90 @ 4/6	20	5	0	£50 @ 5/-	..	..	12 10 0
Children Allowance—							
*£78 @ 4/6 =	£17	11	0				
£32 @ 2/- =	3	4	0				
	20	15	0	£90 @ 5/-	..	..	22 10 0
	£41	0	0				£35 0 0

*The reduced rate only can be claimed on £32, since the taxable income is only £218, as follows—

Total Income	£663
E.I.A.	£110
P.A.	225
C.A.	110
	<hr/>
	445
	<hr/>
	£218

He has had reduced rate relief from £250 but is only entitled to it on £218, i.e., he can reclaim on £32 at 2/-, the rate at which he has paid.

1932-33.

Actual amount paid to A. in previous year	..	..	..	..	£1,200
Amount of tax paid for A. „ „ „	..	..	..	..	✓ 241
					<hr/> 1,441
<i>Deduct Allowances—</i>					
Earned Income	..	..	..	£288	
Personal	..	..	..	100	
				<hr/>	388
					<hr/> <u>£1,053</u>
<i>Chargeable—</i>					
£175 @ 2/6	..	..	..	£21 17 6	
£878 @ 5/	..	..	..	219 10 0	
				<hr/>	
Tax payable by company	..	..	..	£241 7 6	

A can claim repayment as in 1931-32.

For the assessment for 1933-34, the tax paid in respect of 1932-33, £241, will be added to the fees paid to A in 1932-33.

§ 10—Alimony.

Where alimony is paid by a husband under a deed of separation, he should deduct tax as from an annual payment, even if the payments are made weekly. But where the payment is under an order of Court, tax may be deducted only where the order so provides. It would appear to be the practice of the Divorce Court to order maintenance to be paid out of the husband's income after all tax has been deducted, in which case tax cannot be deducted from the maintenance payments (*see Dayrell-Steyning v. Dayrell-Steyning* (1922), 35 T.L.R. 898). The alimony is treated as a charge in arriving at the husband's statutory income, and tax must be kept in charge thereon unless both husband and wife are exempt. Although the alimony is regarded as taxed income of the wife, she cannot reclaim tax thereon.

Where the payment is made in full under an order of Court, the Inland Revenue Authorities, by concession, allow the husband to claim any unexhausted allowances of his wife.

Illustration of Concession.

A. has a total income of £1,200, of which £900 is earned. He pays £350 alimony to his former wife, under order of Court, which directed payment to be made in full. She has £80 per annum income in her own right.

Wife's assessable income	..	..	£80
Personal Allowance	.	..	100
			<hr/>
Taxable Income	..	..	Nil
Wife reclaims tax on £80 @ 5/- = £20.			
Husband's Statutory Income	..	..	£1,200
Less Alimony	..	..	350
			<hr/>
			850
<i>Deduct Allowances—</i>			
Earned Income $\frac{1}{2}$ th of £850 =			£170
Personal	..	..	100
Balance of Wife's Personal	..	20	
			<hr/>
			290
			<hr/>
			£560
			<hr/>
			£ s d.
£175 @ 2 6	..	..	21 17 6
Wife's Reduced Rate—£175 @ 2/6	..		21 17 6
£210 @ 5/	..	..	52 10 0
			<hr/>
Tax payable	..	..	£96 5 0

It should be noted that the above method of applying the concession is not universally adopted, and the facts of each case should be placed before the Inspector of Taxes. Allowance for the children of the marriage is not usually given to both husband

and wife in the concessional treatment, although if each has charge of at least one child, each will be allowed £50 for the first child claimed for.

Alimony received from abroad is assessable under Case V (*C.I.R. v. Anderstrom* (1928), 12 T.C. 482).

§ 11.—Annuities.

An annuity paid out of a superannuation fund may be assessed under Case VI instead of by deduction at the source if the Commissioners so direct. An annuity given as a pension is taxed under Schedule E.

Annuities paid by the National Debt Commissioners, the Post Office Savings Bank, and certain bodies which, under arrangement with the Inland Revenue, do not deduct tax, are assessed under Schedule D, Case III.

In other cases, tax is normally deducted at the standard rate, unless the payer arranges with the Inspector of Taxes either not to deduct tax owing to the recipient's allowances making him exempt from tax, or to deduct at the reduced rate where the taxpayer is liable at that rate only.

Where an educational policy is taken out with an insurance company whereby the holder receives annual payments for his children for a stated number of years in return for the premiums previously paid, in such circumstances that the transaction in substance involves the return of the premiums at compound interest, or, in the event of the death of the child, the return of the premiums without interest, only the interest is assessable (*Perrin v. Dickson* (1929), 14 T.C. 608).

Where the purchase price of an undertaking is a fixed sum payable by instalments, Income Tax is chargeable only on that part of the "annuity" which represents interest (*Scoble and others v. Secretary of State for India* (1903), 4 T.C. 618). Any so-called "annuity" which is simply a payment of an ascertained capital sum by instalments is not chargeable to tax, but in cases where the annuity is not in respect of such a payment it is income of the recipient, even if it is wholly or partly in respect of a return of capital.

An annuity in addition to other income under a will of such an amount as will reimburse all sur-tax payable is part of the annuitant's income, and must be "grossed" by reference to the Income Tax on the gross equivalent thereof and assessed to sur-tax (*Meeking v. C.I.R.* (1920), 7 T.C. 603).

The sums paid by the trustees on account of sur-tax on an annuity left free of Income Tax (including sur-tax) are additional annuities to which the appropriate Income Tax must be added for the purpose of assessment, *i.e.*, the assessment must be based on the gross amount which will produce the net amount of the annuity after paying the Income Tax and sur-tax thereon (*Lord Michelham's Trustees v. C.I.R., Exors. of Lady M.* v. *C.I.R.* (1930), 15 T.C. 737).

A quarterly payment of a fixed sum, for a period of five years, to the executors of a deceased partner, in accordance with a partnership deed, in respect of goodwill, use of the firm's name, etc., has been held to be an annual payment and not an instalment of capital (*Mackintosh v. C.I.R.* (1928), 14 T.C. 15).

A voluntary payment, *e.g.*, an allowance by a father to a son, is not a permissible deduction in the payer's computation nor is it assessable on the recipient.

Where a will provides that an annuity is "free of deductions," this does not as a rule include Income Tax, unless the testator explains that he understands Income Tax to be a deduction (*Turner v. Mullineux* (1861), 1 J. & H. 334). But if the will directs that an annuity is to be paid "free of Income Tax," the trustees must pay the tax thereon. Where the will or a codicil directed the payment to be made "clear of all deductions including Income Tax" this was held not to include sur-tax, but merely those deductions for which the trustees are accountable, *i.e.*, the standard rate portion of Income Tax (*In re Crawshay, Crawshay v. Crawshay* (1915), W.N. 412).

It would now appear, however, that since sur-tax is a deferred instalment of Income Tax, a gift "of such a sum.... as after *deduction* of the Income Tax..... will leave a clear sum of....." or "clear of all *deductions*, including Income Tax" may in future be held to include sur-tax; no case dealing directly with this point would appear to have yet been before the Courts. *In re Hulton, Hulton v. Midland Bank Executor and Trustee Co.* ((1930), 99 L.J. Ch. 316), a testator who died in 1927 directed under his will that an annuitant was to be paid out of income "a clear yearly sum after paying or deducting Income Tax and super-tax," and it was held that this included the proportion of sur-tax payable in respect of the annuity. In his judgment, Bennett, J., said "If the testator had simply directed his trustees to pay to his wife out of

the income of his trust estate such an amount as would give her a clear yearly sum of £12,000 after paying or deducting Income Tax it would, I think, have been reasonably clear that the trustees would have been bound to pay not only the Income Tax at what is now known as the standard rate, but also the sur-tax attracted by an annuity given in such a form; see *in re Crosse* ((1920), 1 Ch. 240). But the limitation as regards Income Tax contained in the clause will, so long as sur-tax continues to be charged at the rates now in force, throw upon the annuitant the burden of discharging a considerable part of the sur-tax attracted by an annuity unless what is in effect a direction to the trustees to pay the super-tax attracted by the annuity out of the income of the trust estate can be construed as a direction to pay the sur-tax. As far as I can see there is no real or substantial difference between super-tax and sur-tax. In every essential feature super-tax and sur-tax are, in my judgment, the same tax."

Where an annuity is paid "free of Income Tax," an annuitant obtaining any repayment of tax is required by the trustees under the will or settlement to hand over to them such a proportion of the repayment as the annuity bears to the total income of the annuitant. That proportion forms part of the residuary estate of the trust (*re Pettit; Le Ferre v. Pettit* (1922), 2 Ch. 765). Were it not for this rule the annuitant would in the end have received out of the estate more than 20s. in the £ on the gift. In practice, the proportion of the reclaim is not handed over to the trustees, but is deducted by them from the next instalment of the annuity.

Illustration.

Under her husband's will, a widow receives an annuity of £300 per annum, commencing on 31st January, 1932. Her other income consists of taxed dividends on Consols, £100 per annum (gross amount). She was 65 on 31st March, 1932

COMPUTATION, 1931-32.

Annuity, gross $\frac{2}{3} \times £300$	..	..	£400
Consols Dividends	..	..	100
<hr/>			
Statutory Income	..	..	500
Deduct Personal Allowance	..	..	100
<hr/>			
Taxable Income	..	..	£400
<hr/>			
Chargeable—	..		£ s. d.
£175 @ 2/6	..	..	21 17 6
225 @ 5/	..	..	56 5 0
<hr/>			
			78 2 6
Less: Taxed at source—			
£500 @ 5/-	..	..	125 0 0
<hr/>			
Tax reclaimed	..	..	£46 17 6
<hr/>			

Proportion due to Estate $\frac{1}{3}$ of £46 17s 6d. = £37 10s 0d

This amount would therefore be deducted by the Trustees from the annuity payable on 31st January, 1933, making a net payment of £262 10s. 0d.

COMPUTATION—

1932-33.		1933-34.
Annuity, gross = $\frac{2}{3}$ of £262 10 0	£350	$\frac{2}{3}$ of £246 £328
Consols Dividend	100	100
<hr/>		<hr/>
	450	428
Deduct Allowances—		
Age $\frac{1}{3}$ th of Total Income	£90	86
Personal	100	100
<hr/>		<hr/>
	190	186
<hr/>		<hr/>
	£260	£242
<hr/>		<hr/>

	1932-33.	1933-34.
Chargeable : £175 @ 2/6 ..	£21 17 6	£21 17 6
85 @ 5/- ..	21 5 0	£67 @ 5/- = 16 15 0
	<hr/> 43 2 6	<hr/> £38 12 6
<i>Less Taxed at source—</i>		
£450 @ 5/- ..	112 10 0	£428 @ 5/- = 107 0 0
	<hr/> £69 7 6	<hr/> £68 7 6
Tax reclaimed ..	<u>£69 7 6</u>	<u>£68 7 6</u>
Proportion due to Estate $\frac{1}{30}$ of £69 7 6	$\frac{1}{30}$ of £69 7 6	$\frac{1}{30}$ of £68 7 6
	= <u>£54</u>	= <u>£52 8 0</u>
Net Annuity next paid	<u>£246</u>	<u>£247 12 0</u>

If, however, the will directs that the annuity is such as, “after deduction of Income Tax therefrom at the current rate for the time being, will amount to the clear yearly sum of £x,” this is not equivalent to a “free of tax” annuity, but is a fluctuating annuity, measured by a constant net sum, and the annuitant can retain any Income Tax recovered (*re Jones, Jones v. Jones* (1933), W.N. 176).

§ 12.—Executors and Trustees.

The tax chargeable on a deceased person's income to the date of death is assessable on the executors or administrators, and is a debt due and payable out of the estate (§ 31 (2), 32 (3), and 34 (4)—1926 ; § 45 (6)—1927 ; § 15 (4)—1930). Assessments can only be raised upon the executors, etc., for tax due in respect of income prior to the deceased's death, within three years after the death (Rule 18, General Rules), but may be for any of the six years for which it is competent to raise assessments (§ 29—1923). The deceased is entitled to personal, etc., allowances

for the full year in which he died ; and his widow (if any) is entitled to a full year's allowances as a single person for the same year, including the children allowance, etc.) (See illustration on p. 459.)

Until the residue of the estate has been ascertained the income arising from the residue is income of the executors, and is assessable upon them ; the assent of the executors to the bequest of residue does not relate back to the death of the testator (*Rex v. Special Commissioners of Income Tax, ex parte Dr. Barnardo's Homes National Incorporated Association* (1921), 7 T.C. 646.) The same principle was followed in the case of *Marie Celeste Samaritan Society v. Commissioners of Inland Revenue* ((1926), 11 T.C. 226), and it now seems well established that (where there is a residuary legatee the income arising from the residue is the income of the executors up to the date upon which the residue is ascertained.) Where, however, the residue is left to a life tenant and a remainderman, the Revenue Authorities contend that the income arising from the residue is the income of the life tenant as from the date of death, and is his income for the fiscal year during which it is received, the argument being that all sums which a life tenant receives must of necessity be income.

So long as mortgage or other debts remain unpaid the executors are entitled to retain any assets coming to their hands, and if a residuary legatee has not enforced conveyance to himself of his share of the residue, the income arising from his share is not his income for sur-tax purposes (*Daw v. C.I.R.* (1928), 14 T.C. 58). The case of *Daw v. C.I.R.*, however, does not lay down the general proposition that a residuary estate has not been ascertained where there

is an outstanding mortgage upon it. The questions for the purpose of arriving at the income of beneficiaries and their liability for sur-tax, whether the residue has or has not been ascertained, and whether the executors have or have not, expressly or by conduct, assented to such ascertainment, are questions of fact in each case to be determined by the Commissioners; assent can be implied (*C.I.R. v. Smith* (1930), 15 T.C. 661). The income from residue distributed to a residuary legatee pending ascertainment reaches him as capital, and is not income in his hands for the purposes of sur-tax (*Herbert v. C.I.R.* (1925), 9 T.C. 593).

In the case of a specific legacy, however, the income from the date of death belongs to the legatee, and sur-tax is payable thereon for the years in which it arises, although the income may be received by the legatee in one sum on the date of the transfer to him of the legacy (*C.I.R. v. Hawley* (1928), 13 T.C. 327).

The trustees of an estate must account for tax on the income thereof, and deduct tax from the payments made to beneficiaries. It was held in *Murray v. C.I.R.* ((1926), 11 T.C. 133) that, where the will provides for charging expenses against income, a beneficiary's income is the grossed share of the actual net income of the estate after the deduction of all prior charges, including the expenses of management of the trust. This decision was followed in *Macfarlane v. C.I.R.* ((1929), 14 T.C. 532), in which it was said that the question whether administration expenses are or are not to be paid out of income to which the beneficiary is entitled may come in almost every case to be a question depending on the construction of the trust deed.

It appears to be the practice of the Revenue to treat as the claimant's income the actual amount payable to him, grossed at the standard rate, or his proportionate share of the statutory income of the trust, whichever is lower.

Where the will does not provide for charging expenses, it is thought that the share in the statutory income computed according to the Income Tax rules before charging expenses should be treated as the beneficiary's income for Income Tax purposes.

In *Garland v. Archer-Shee* ((1930), 15 T.C. 693), it was decided that where by the law of the place where a foreign trust is situated (in this case in New York State) the beneficiary is not entitled specifically to the several sources of the trust fund, the mode and time of the application of the income being at the discretion of the trustees, then a beneficiary resident in the United Kingdom is assessable as on a foreign possession, on remittances to this country only, and not on the full income arising.

An annual sum paid to a trustee as remuneration for his services under a deed of settlement, is an annual payment within the meaning of Rule 19, General Rules, and is therefore taxable by deduction (*Baxendale v. Murphy* (1924), 9 T.C. 76).

Where the Will directed the trustees to take out an educational endowment assurance on the life of the beneficiary, it was held that the income applied in paying the premiums was not income of the beneficiary (*C.I.R. v. Dewar and another* (1931), 16 T.C. 84).

Where the deceased carried on a business, the assessments are made as if the business had been discontinued on the date of his death and a new

business commenced by the executors on that date (Rule 11, Cases I and II, Schedule D, as amended by § 32—1926). No earned income allowance can be given to the executors or trustees who carry on the business even where they are beneficiaries.

It was held in *Commissioners of Inland Revenue v. Henderson's Trustees* ((1931), 16 T.C. 282), that the Apportionment Act, 1870, does not affect the relations between persons paying Income Tax and the Revenue, and the proportion of dividends, etc., accrued prior to but falling due after death does not form part of the income of the deceased for Income Tax purposes, and the executors are not entitled to claim repayment of the tax thereon.

It was formerly the practice of the Inland Revenue Authorities to treat the proportion of any dividends, etc., received after death but accruing in part prior thereto and credited to the capital of the estate, as income neither of the deceased (since it was not received by him as income—see *C.I.R. v. Henderson's Trustees*, *supra*) nor of the beneficiaries (since it was not received by them as income), and accordingly to allow no repayment of tax thereon in respect of allowances. This practice seems to have been modified to a certain extent, and if a life tenant receives such sums they will be treated as part of his income.

Where there is no life tenant all residuary income, pending the ascertainment of residue, is treated as capital, and no repayment claim is strictly allowable in respect of such income; but, by concession, legatees entitled to repayment of tax by reason of their allowances are permitted to treat such income as income in their hands against which allowances can be claimed. In such a case, the full amount of income

arising after death is treated as income of the residuary legatee, even if the Apportionment Act, 1870, requires part of it to be treated as capital, provided it is received by the legatee as part of the residue.

A trustee is charged with tax, not as trustee, but as the person in receipt of the income of the trust; therefore, untaxed interest received by the trustees or executors, even if mainly or wholly accrued prior to the death of the testator and therefore to be treated *pro tanto* as capital, is assessable in full on the trustees or executors (*Reid's Trustees v. C.I.R.* (1929), 14 T.C. 512).

Each case is treated on its own merits, and no general rule can be laid down as to the concessions which the authorities are prepared to make in other cases. As to the allocation of income to a charity where the residue is not paid within the executor's year, see p. 363.

Sur-tax for the year of death is calculated upon the deceased's income to the date of death, but at the rate for the previous year if that is lower than that for the year of death. The instalment for the preceding year will also be outstanding unless the death takes place late in the fiscal year.

§ 13.—Life Tenants.

The income of a life tenant may include property of which he has the beneficial enjoyment. A testator's will provided that his residence, furniture, etc., with an annual sum of £2,000 towards the upkeep and expenses, should be available for the use of his widow and his daughter. Both resided in the house, and it was held that one-half of the annual value of the house

and of the £2,000 was part of the daughter's total income for super-tax purposes (*Shanks v. C.I.R.* (1928), 14 T.C. 249). In another case, the will provided that all outgoings in respect of the estate and expenses of keeping up the residence, etc., enjoyed by the life tenant, were to be paid out of the income of the trust estate, and it was held that the amounts actually expended, grossed for Income Tax were income of the life tenant (*Sutton v. C.I.R.* (1929), 14 T.C. 662). See also *Miller v. C.I.R.* ((1930), 15 T.C. 25), in which Lord Warrington of Clyffe said: "the occupier bears and pays the entire tax..... because he is the only person in enjoyment of the annual value," and it was held that the annual value of the mansion, house and lands occupied rent free by the respondent (under terms in the trust disposition) was income of the respondent liable to super-tax, as well as the sums expended by the trustees in payment of rent, rates, etc., on the house and lands. The fact that she was entitled to have the taxes paid by the trustees did not affect her position as occupier in her own right, and the annual value of her beneficial enjoyment was income for the purposes of the Act (being of a nature to be included in a claim for allowances) and liable to super-tax.

§ 14.—Widows.

As has already been stated, a widow is assessed as a single person as from the date of her husband's death. Her income to the date of his death is included with his, but as from that date it is assessable upon her. Where she owns investments in her own right, any untaxed interest therefrom is assessable upon her on the basis of the amount received in the preceding

year, according to the rules of Case III, Schedule D, irrespective of the fact that prior to the death her husband was assessed in respect of her income (*Leitch v. Emmott* (1929), 14 T.C. 633). This decision would appear to apply to any income from her separate sources, and the assessments upon her income for the year of death should be split between her late husband and herself on a time basis.

Illustration.

A died on 31st August, 1933. His business profits, as adjusted for Income Tax purposes, were —Years ended 30th September, 1932, £1,200; 1933, £1,800. Dividends were received on 31st May, 1933, of £300 (gross amount) and on 15th August, 1931, of £200 (gross amount).

A's wife was also in business on her own account. Her adjusted profits were —Years ended 31st December, 1932, £600; 1933, £500. She also held £12,000 $2\frac{1}{2}\%$ Consols.

A's will provided that his widow was to be paid an annuity of £600 per annum, by half-yearly instalments, the first to be paid six months after death.

There were two children under 16.

COMPUTATIONS, 1933-34.

	A.	Widow.
A's business — Actual Profits $\frac{1}{2}$ ths of £1,800	750	
Mrs. A's business—Preceding years' Profits—£600 assessment apportioned under Rule 9, Cases I and II, $\frac{1}{2}$ ths of £600	250	$\frac{1}{2}$ ths of £600 350
Dividends .. .	500	
Consols Interest Received 5th July, 1933 ..	75	Received 5th Oct, 1933, 5th Jan and 5th April 1934 225
		Annuity, 28th Feb., 1934 300
	<hr/> 1,575	<hr/> 875

A.				Widow.			
Brought forward .. 1,575				875			
<i>Deduct Allowances—</i>							
Earned Income	200			Earned Income	70		
Personal ..	150			Personal ..	100		
Additional Personal	45			Children ..	90		
Children ..	90						
		— —	485			— —	260
		— —				— —	
Taxable Income ..		1,090				£615	
Chargeable—	£	s.	d.	£ s. d.			
£175 @ 2/6	21	17	6	£175 @ 2/6 ..	21	17	6
915 @ 5/-	228	15	0	140 @ 5/- ..	110	0	0
		— — —				— — —	
		250	12 6			131	17 6
<i>Less Taxed by</i>							
<i>deduction—£575 @</i>							
5/-	143	15	0	£525 @ 5/- ..	131	5	0
		— — —				— — —	
Tax payable		£106 17 6				12 6	

NOTE.—It must be observed that not only do the husband and wife receive a full year's personal allowance, the former as a married man and the latter as a single person, but the wife is also entitled to allowance for her children, despite the fact that her husband received the children allowance in respect of the same year. This double allowance is only available in respect of the widow's own children, an adopted child does not give rise to a double allowance. It has been assumed that the income of the children in their own right does not exceed £50 each.

§ 15.—Profits from Betting, Illegal Transactions, etc.

A person who attends races and systematically bets is exercising the vocation of betting, and is liable to assessment (*Partridge v. Mallandaine* (1886), 2 T.C. 179). But a person whose means of livelihood are betting on horses from his private address with bookmakers at starting prices only, is not in receipt of

profits or gains assessable to income tax, Schedule D, either under Case I or Case II, as from a trade or vocation, or under Case VI (*Graham v. Green* (1925), 9 T.C. 309). The distinction appears to be between *professional* and *private* betting.

The Acts charge tax on "profits," drawing no distinction between legal and illegal sources, and there can be a trade within the charge to Income Tax which is either in whole or in part an illegal trade (*Mann v. Nash* (1932), 16 T.C. 523).

If a trade is carried on (and that is a matter of fact), it does not matter whether that trade is legal or illegal, the profits can be assessed, *e.g.*, ready-money and street betting, though illegal businesses, have been held to be assessable (*Southern v. A.B.* and *v. A.B. Ltd.* (1933), 12 A.T.C. 203).

§ 16.—**Building Societies, New Arrangement B (13A of 1932).**

A special arrangement has been entered into between the Inland Revenue and the majority of building societies, in order to obviate the large number of small adjustments of liability which would be involved under the ordinary rules, in view of the fact that the majority of such societies' transactions are with persons either exempt from tax or liable only at the reduced rate. The provisions of this arrangement are—

PART I.—ASSESSMENT UPON SOCIETY.

1. The society consents to be directly assessed to income tax under Schedule D—

(a) in respect of the liability of its investors to income tax at the standard rate on dividends

or interest from the society, upon the amount credited to investors in the society's year next preceding the year of assessment for or in respect of dividends or interest ; and

- (b) upon the amount by which the whole profit, as hereinafter defined, of the society for the same year exceeds the amount under (a).

Rate of Tax.

2. The rates of tax to be charged will be—

(I) the standard rate in respect of—

(a) dividends or interest mentioned in paragraph 1 (a) arising from :—

(i) any investment exceeding £5,000 and from any investments exceeding £5,000, in the aggregate, of any investor (husband and wife being treated as one person for this purpose) ;

(ii) any investment, of whatever amount, held by, or on account of, or in trust for any incorporated company or society (not being a company or society which is entitled to exemption from tax under Schedule D) ; and

(b) the amount of the excess defined in paragraph 1 (b) ;

(II) two-fifths of the standard rate in respect of the balance of the dividends or interest mentioned in paragraph 1 (a).

Calculation of " Whole Profit."

3. The whole profit referred to in paragraph 1 (b) is to be ascertained by deducting the working

expenses from the total receipts for the accounting year, in accordance with the rules governing the computation of liability to income tax under Case I of Schedule D, subject to the following provisions:—

(a) Working expenses will include—

- (i) Losses sustained on the realisation of properties mortgaged to the society ;
- (ii) Income tax paid in respect of amounts credited to investors for dividends or interest.

(b) Profits or losses arising on the realisation of investments will be excluded.

(c) All rents received will be included and rents paid will be allowed as a deduction.

Set-off of Taxed Income.

4. Where the total receipts of the society for any accounting year include income upon which income tax has been paid at the source, the amount chargeable for the following income tax year at the standard rate will be reduced by the gross amount of the said income. Where that gross amount exceeds the amount chargeable at the standard rate, there will be deducted from the amount chargeable at two-fifths of the standard rate an amount equal to two and a half times the excess.

Schedule A.

5. All property owned by the society, whether let or in its own occupation, and also all property in the hands of the society, as mortgagee in possession, is to be exempted from Income Tax, Schedule A, except in respect of ground or lease rents, if any.

PART II.—LIABILITY OF INVESTORS.

6. Investors will be required to include dividends or interest in their returns of total income for Income Tax (and sur-tax) purposes. No charge to Income Tax at the standard rate will be made upon investors, in respect of such income from the society, but it will be included in total income for the purpose of charging sur-tax.

7. No repayment of tax will be made in respect of income derived from investments with the society, and the society will not issue any certificates of payment of tax in respect of such income.

PART III.—MORTGAGE INTEREST PAID BY BORROWERS.

8. A borrowing member who has no taxable income is not to be charged for mortgage interest.

9. A borrowing member who has taxable income is to be relieved from the tax applicable to mortgage interest. Relief will be allowed by the Inspector of Taxes upon a certificate from the secretary of the society of the amount of mortgage interest paid.

Where the society's year does not coincide with the Income Tax year, certificates will be accepted showing the interest for the society's year ending within the Income Tax year, provided that the society will adhere to this basis in all cases and will obtain an undertaking from each borrower to accept allowances accordingly.

PART IV.—GENERAL.

10. A certificate by the auditor of the society will be required of the accuracy of the amounts returned for Schedule D assessment. The society agrees to furnish

a copy of its statutory annual account and statement to the Inspector of Taxes for the district in which its head office is situated, and also to permit any duly appointed officer of the Commissioners of Inland Revenue to test the accuracy of the amounts returned or to verify the correctness of any certificate given under the arrangement, by inspection of the books and accounts of the society.

11. The society undertakes *for the purposes of paragraph 2 (a)*—

- (a) to require, in the case of each new or additional investment of £500 or more, a declaration sufficient to establish whether the rate of tax to be charged in respect of the dividends or interest is the standard rate or two-fifths of the standard rate ; and
- (b) to make such arrangements as may be practicable for the aggregation of all accounts of the same investor and of husband and wife, whether such accounts are in the same or in different branches or departments of the society.

12. This arrangement will operate for the period of three years ending on the 5th April, 1935. The society will facilitate a statistical investigation by the Inland Revenue Department of the working of the arrangement by furnishing extracts of the payments of dividends or interest for the society's year ending within the Income Tax year 1933-34. These extracts will give the name and address of each investor, the amount of his investment, and the amount of dividends or interest thereon, where the investment amounts to £1,000 or more, and similar particulars for a three per cent. sample of investments below £1,000.

13. *Investor* includes any shareholder, depositor or lender.

Dividends or interest includes interest, bonus and any other distribution in respect of shares, deposits or loans.

Investment includes any share, deposit, loan or other similar account.

We desire to adopt the above arrangement and hereby undertake to abide by the same.

On behalf of.....

..... *Chairman.*

..... *Secretary.*

Dated.....

Illustrations.

(1) A. had an investment income of £2,600, and building society interest received free of tax amounted to £93. He owned his dwelling house, assessed under Schedule A at £400 net, on which for the year ended 30th November, 1933, he paid mortgage interest of £60 to a building society. A. was a married man with five children under 16.

COMPUTATION, 1933-34.

Dividends, etc.	£2,600
Building Society Interest Received ..	93
House—Net Annual Value ..	400
Less Building Society Mortgage Interest ..	60
	— —
	340
Statutory Income for Sur-Tax ..	£3,033
Deduct Building Society Interest Received—not assessable to Income Tax proper ..	93
	— —
Income chargeable to Income Tax ..	2,940

				Brought forward ..	£2,940	
				<i>Deduct Allowances—</i>		
				Personal ..	£150	
				Children ..	210	
£2,000	Sur-tax.		Nil.			360
500	@ 1/-	£25	0 0			
500	@ 1/3	31	5 0			
33	@ 2/-	3	6 0			
				Taxable Income		<u>£2,580</u>
				Chargeable—	£	s. d.
£3,033		£59	11 0	£175 @ 2/6	21	17 6
	Add 10%	5	19 1	2,405 @ 5/-	601	5 0
		£65	10 1		623	2 6
				<i>Less Tax suffered by deduction—</i>		
				£2,600 @ 5/-	650	0 0
				Tax reclaimed	<u>£26</u>	<u>17 6</u>
				The reclaim is made up of—		
				Tax on allowances £360 @ 5/-	90	0 0
				Reduced Rate £175 @ 2/6 ..	21	17 6
					111	17 6
				<i>Less Schedule A assessment—</i>		
				£340 @ 5/-	85	0 0
				As above	<u>£26</u>	<u>17 6</u>

(2) B. has an earned income of £300, and received interest on a deposit in a building society of £20.

COMPUTATION, 1933-34.

Earned Income ..	£300
<i>Less Earned Income</i>	
Allowance ..	£60
Personal Allowance	100
	<u>160</u>

Taxable Income .. £140 @ 2/6 = £17 10 0

B. cannot reclaim tax in respect of the interest received, although if this had been a free of tax dividend, he would have reclaimed tax at 2/6 on the gross equivalent.

§ 17.—Penalties.

Various penalties are enforceable under the Income Tax Acts for non-fulfilment, by persons assessable, of their statutory duties, of which the following are the most important :—

Under § 107, the penalty on any person—required by the Act to deliver any list, declaration, or statement—refusing or neglecting so to do within the time limited by the notice, is, if proceeded against before the General Commissioners, a sum not exceeding £20, and treble the tax chargeable (added to the assessment), or, if proceeded against by action or information in any Court, a *sum of* £20 and treble the tax which ought to be charged (§ 23 (2)—1923).

Under § 100, every person upon whom notice is served requiring him to make a return of any profits, accounts or income chargeable under Schedules D and E is liable on default to a penalty under § 107, whether he is or is not chargeable with tax ; but the penalty in the case of a person who is not found to be chargeable with tax shall not exceed £5 for any one offence.

Under § 146, where a person has refused or neglected to deliver any statement or schedule, and it is found that an increased assessment ought to be made, a penalty can be inflicted not exceeding treble the amount of the tax payable ; but where the statement or schedule is incomplete, the penalty must not exceed three times the amount of the tax on the amount of the additional assessment.

Under § 127, where a person has been given notice of a surcharge by the Inspector (where the latter discovers that the original assessment was inadequate)

and submits a new return or written notice that he abides by his original return, and in any such declaration wilfully and fraudulently declares anything which is false, he is guilty of a misdemeanour, and liable to imprisonment not exceeding six months, and to a fine not exceeding treble the tax surcharged, as the Court may order.

Under § 139, where a person has been required by the Commissioners to deliver any schedule and such person fails to do so, he shall be liable to a penalty not exceeding £20, and treble the tax at which he ought to be assessed. A similar penalty is enacted by Rule 14, Schedule A, No. IV, in respect of returns under Schedule A, for wilfully failing to deliver or produce relevant documents.

Under § 144, a person who after being duly summoned to appear before the General Commissioners (*a*) neglects or refuses to appear at the time and place appointed, or (*b*) appears, but refuses to be sworn or to subscribe the oath, or (*c*) refuses to answer lawful questions touching the matters under consideration, shall forfeit a sum not exceeding £20. The penalty in respect of (*b*) and (*c*) does not apply to any clerk, agent or employee of the person assessed.

Under § 30, the penalty for making fraudulent claims for any allowance or deduction, or fraudulently concealing or untruly declaring any income or any sum which he has charged against or deducted from, or is entitled to charge against or to deduct from another person, or fraudulently making a second claim for the same cause, is £20, and treble the tax chargeable in respect of all the sources of his income. This means treble the tax chargeable on the whole income for

the year of assessment, whether made by deduction or not, and not treble the tax on the income still chargeable as not having already borne tax. For aiding and abetting the penalty is £500 (§ 23—1923).

Section 40 (4), provides a penalty for fraudulent claims for exemption under §§ 37-39 (charities, friendly societies, etc., *see* p. 361) in respect of interest, etc., chargeable under Schedule C, to the extent of £100, and if a person makes such a claim on his own behalf, he is, in addition, liable to be charged treble the tax so chargeable.

Under § 132 the penalty on persons fraudulently changing their residence, or converting property, or delivering false statements, or guilty of other fraud, is treble the amount of the excess tax chargeable; and for aiding and abetting, the penalty is £500 (§ 23—1923).

Under Rule 10, Schedule A, No. V, where a person makes any false or fraudulent claim under Rule 9 for abatement of an assessment in respect of loss by flood or tempest, he shall forfeit £50 and treble the tax charged on him in respect of the lands. Under Rule 11, the penalty for aiding or abetting is £100. Rule 3, Schedule B, extends these rules to Schedule B.

Under § 34, any person guilty of any fraud or contrivance in making application for relief, in respect of loss under the operation of that section, is liable to a penalty of £50.

Under § 44 (3), 1927, if any person liable to sur-tax without reasonable excuse fails to make a return, or to give to the Special Commissioners before 30th September next following the end of the year of assessment, notice that he is chargeable to sur-tax, he

shall be liable to a penalty not exceeding £50, and after judgment has been given for that penalty, to a further penalty of the like amount for every day during which the failure continues. Similar penalties are imposed in relation to particulars to be furnished of dealings in assets *cum dividend*, so that sur-tax is avoided (§ 33—1927).

Under § 225, the fine for obstruction of officers in the execution of their duties is £100.

Under § 227, a person found guilty of knowingly making a false statement or representation is liable on summary conviction to six months imprisonment with hard labour. If, however, the proceedings are taken under the provisions of the Perjury Act, 1911, the penalties are much more severe.

A penalty of £100 is imposed for failure to furnish particulars of tax deducted under Rule 21 of the General Rules (§ 26—1927), and a penalty of £50 is imposed by Rule 23, General Rules, upon any person who refuses to allow a deduction of tax authorised by the Acts.

Under § 23 (1923), proceedings for the recovery of any fine or penalty incurred under the Income Tax Acts may be commenced within six years next after the fine or penalty is incurred. The Commissioners of Inland Revenue or the Treasury may, in their discretion mitigate any fine or penalty (§ 222) except under § 132 and Schedule A, No. V, Rule 10, and Schedule B, Rule 3. Penalties may be added to and collected with the assessment (§ 223). But the High Court has no power to mitigate penalties under §§ 30, 32, 34, 40, 102 (2), 107, 132 185, 225, § 33 (6)—1927, or § 44—1927, or under Schedule A, No. IX, Rule 5;

Schedule C; Schedule A, No. V, Rule 11; Schedule B, Rule 3; or General Rule 23.

Under § 162, the collector is empowered to distrain for non-payment of tax, upon the premises, etc., in respect of which the tax is charged, or the person charged by his goods or chattels.

Under § 165, where no sufficient distress can be found, the General Commissioners may commit a defaulting person to prison until he pays the tax, with costs.

Under § 169, any tax charged under the Act may be sued for and recovered by proceedings in Court.

Penalties are rarely exacted to the full extent provided by the Act, except in very grave cases. The Commissioners usually exercise their powers to mitigate the penalties provided that, where they discover the default, a sum in respect of compound interest and part penalties is paid. Where the taxpayer makes the disclosure the sum exacted is smaller (*see* also section on "Back Duty").

§ 18.—Back Duty.

The term "back duty" is the accepted name given to tax which has not been charged in those past years, which are prior to the six years for which additional assessments can be raised. The very high rates of Income Tax, super-tax and excess profits duty levied in the last sixteen years tempted many taxpayers to evade their legal burden, with consequent serious loss to the Revenue. Other taxpayers have evaded their liability through ignorance or carelessness.

Although such evasion has been practised, consciously or unconsciously, by a very small minority,

the tax so lost to the Revenue is undoubtedly a substantial sum, throwing a correspondingly heavier burden upon the honest and careful citizen.

(Evasion must not be confused with legal avoidance. "No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores. The Inland Revenue is not slow -- and quite rightly -- to take every advantage which is open to it under the taxing statutes for the purpose of depleting the taxpayer's pocket. And the taxpayer is in like manner entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Revenue" (*The Lord President (Lord Clyde) in Ayrshire Pullman Motor Services and David M. Ritchie v. C.I.R.* (1929), 8 A.T.C. 531, at p. 537).

The penalties for evasion have already been outlined, and in cases where a practitioner is called in to deal with a "back duty" case, he should make himself thoroughly familiar with the exact words of the sections of the Act to see which penalties are relevant. Where fraud is absent, only §§ 107 and 222 are relevant—see also § 23, 1923, however.

It is under § 222 that the Commissioners of Inland Revenue derive their powers of "bargaining," whereby an agreed lump sum payment is accepted in settlement of back duty, interest and penalties.

Students are often at a loss to understand how the Inland Revenue Authorities can open "out of date" years, when § 29, 1923, enacts that assessments may be amended, additional assessments made, etc., only within six years after the end of the year to which

the assessment relates, or the year for which the person liable to Income Tax ought to have been charged. The penalty provisions provide an answer—the taxpayer usually prefers to pay the back duty and interest, with a sum by way of mitigated penalties rather than be mulcted in the possible penalty under § 107—1918, or § 23 (2)—1923, of £20 plus treble the amount of tax which ought to have been paid for each of the six years *within* the time limit, and possible publicity if he is prosecuted. Moreover, the penalties imposed by § 107 (1) and (3) are incurred not merely by non-delivery of a return, but by delivering a return which is not true and correct (*Attorney-General v. Till*, (1909), 5 T.C. 440).

Where a person who in making a claim for or obtaining any allowance or deduction or in obtaining a certificate for repayment in respect of relief, is guilty of any fraud or contrivance or fraudulently conceals or untruly declares any income or annual charges, or fraudulently makes a second claim for the same cause, then § 30 applies. The words “treble the duty chargeable in respect of all sources of income” mean treble the duty chargeable on the *whole income* for the year of assessment in question, and not merely treble the duty on the income still chargeable as not having borne the tax (*Lord Advocate v. McLaren* (1905), 5 T.C. 110); 7 F. 984) “The offence.....is not, in my opinion, an inaccurate, but a false or untruthful declaration..... A charge of untruly declaring seems to me to imply the intention to deceive” (*Per Lord Kinneir*, 7 F. p. 992, *ibid*).

Section 5, Perjury Act, 1911, should be noted, viz. :—

If any person knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made—

(a) in a statutory declaration ; or

(b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return, or other document which he is authorised or required to make, attest, or verify, by any public general Act of Parliament for the time being in force ; or

(c) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any public general Act of Parliament for the time being in force,

he shall be guilty of a misdemeanour and shall be liable on conviction thereof to imprisonment, with or without hard labour, for any term not exceeding two years, or to a fine or to both such imprisonment and fine.

The common law may also be invoked.

Section 140 (1) gives relief to a taxpayer who makes full disclosure by delivering statements rectifying his omissions and wrong statements, provided he can be said to have *discovered* his “ omission or wrong statement.” Where no return has been rendered, the taxpayer is entitled to take advantage of § 140 (2) and deliver a proper statement or schedule before proceedings have commenced. Section 140 (3) authorises proceedings to be stayed where no fraud or evasion was intended.

Fraud must not be confused with negligence. Fraud can only be proved “ when it is shown that a false representation has been made knowingly, or

without belief in its truth, or recklessly, careless whether it be true or false " (*Lord Herschell in Derry v. Peek* (1889), 14 A.C. 337).

In cases where the taxpayer himself does not initiate the enquiries by disclosure, enquiries leading to the discovery of unassessed income arise in many ways. The Inspector may act on the information given to him by a common informer, or may learn that the taxpayer's mode of life is incompatible with the income returned. Again, the taxpayer's return may disclose new sources of income which lead the Inspector to believe that the taxpayer must have made investments out of sources other than savings. The honest taxpayer in such a case can prove that he has received loans or legacies, won prizes in competitions or sweepstakes, gained money on betting or Stock Exchange dealings, etc., and that his returns were correct: but if in fact his new capital is the result of saving undisclosed income, the Inspector's suspicions are proved to be soundly founded.

Enquiries as to the reason for unusual fluctuations in gross profit may bring to light that the taxpayer has been introducing fraudulent invoices for purchases, suppressing sales, or manipulating stock values. The above instances are by no means exhaustive, but will suffice to indicate to the student that the Inspector's seemingly irrelevant lists of queries on a client's accounts are not always so unnecessary as they appear to be.

Once enquiries have been made, the taxpayer must make the fullest disclosure, in his own interests. Where he is engaged in trade, certified accounts for the years involved should be prepared, if at all possible.

Unfortunately, however, the preparation of such accounts is all too frequently found to be impossible, and the compilation of capital statements (officially termed a "means test") is then the best that can be prepared. It is not within the scope of this work to explain in detail how such statements should be drawn up, since that is a matter akin to the preparation of profit statements where books are kept by single entry, or where no books are kept at all, matters adequately dealt with in book-keeping text books.

The preparation of such statements is usually a matter of the utmost difficulty, owing to the absence of reliable information and records. Bank pass books are frequently the only available records, and these are not usually adequate, since neither do they show details of the items entered therein nor do they contain any evidence of receipts or payments not passed through the bank.

The following outline of a capital statement indicates some of the matters to be investigated in order to arrive at the required figures :—

A's worth at 6th April, 1926 —

Dwelling House at cost	..	..	£1,500
Furniture therein	..	..	600
Week-end cottage, at cost	..	..	400
Furniture therein	..	..	100
Business Assets (net)	..	..	5,000
Investments, at cost	..	..	10,000
National Savings Certificates, self and wife, at cost	..	..	775
Loans	..	..	2,000
			<hr/>
			20,375
Less Creditors	..	..	£375
Mortgage	..	..	400
			<hr/>
			775
			<hr/>
Net Assets	..	..	<u>£19,600</u>

INCOME TAX.

At 5th April, 1933 :—			
Dwelling House, at cost	..	..	£1,500
Furniture therein—			
As at 6th April, 1926	..	£600	
Additions at cost	..	200	
		<hr/>	800
Business Assets (net)	..	..	14,000
Investments, at cost	..	..	21,000
National Savings Certificates at cost	..		800
Loans	..	..	6,000
Deposit Account and Cash	..	..	3,100
			<hr/>
			47,200
<i>Less</i> Creditors	..	..	£200
Loans	..	..	1,000
		<hr/>	1,200
			<hr/>
Net Assets	..	..	<u>£46,000</u>
Increase in Assets			
	..	..	£26,400
Add Personal Living Expenses for the period	..	..	7,000
Insurance Premiums (Life), Income Tax and Loan Interest paid	..		1,200
Losses on Stock Exchange and betting transactions	..	..	700
Loans made during period, now irrecoverable (not included above)			1,000
<i>Deduct</i> Legacies received			
	..	£6,000	
Bonus Shares sold—proceeds		700	
Matured Endowment Policy	..	..	1,000
Investment Income, Loan Interest, etc., <i>net</i>	..	5,800	
Deposit Interest	..	300	
Profit on Sale of Cottage and Furniture	..	50	
Profit on War Savings Certificates	..	225	
		<hr/>	14,075
Amount to be taken as business profits and unexplained income for period			
			£22,225

It now remains to apportion this income over the years covered by the statement, not necessarily equally, as the facts of the case may indicate that in certain years the capital increment may be more or less than in others. Interim capital statements may be desirable. Statements of total income must then be prepared for each year, and the tax computed.

A certificate of complete disclosure is then usually required to be signed by the taxpayer, and the matter of the amount of duty to be paid is then open to argument. A reasonable offer consisting of the tax under-paid, compound interest and, in appropriate cases, a sum for commuted penalties, should be made, having regard to all the facts and the present financial position of the taxpayer.

When the offer has been accepted by the Inland Revenue, frequently allowing for payment by instalments, the taxpayer is required to sign a written undertaking that he will pay as agreed in consideration of the Revenue Authorities waiving their rights to take proceedings for penalties, and that failure to pay an instalment will make the whole balance immediately payable. It was held in *Attorney-General v. Johnstone* ((1926), 10 T.C. 758), that the Commissioners of Inland Revenue were empowered by § 222 to accept a sum in composition of penalties in this way, and that such a contract was perfectly legal and binding.

The following is a reprint of the "White Paper" issued by the Enquiry Branch of the Inland Revenue to those suspected of being liable to back duty, recording the practice regarding disclosure :—

PARLIAMENTARY DEBATES of 19 JULY, 1923.**(DAILY REPORTS)**

Vol. 166, No. 100, Col 2518.

DIRECT TAX.**(FRAUD AND EVASION)**

Mr. A. M. SAMUEL asked the Financial Secretary to the Treasury whether it has been brought to his notice that there are taxpayers who have been guilty of Income Tax fraud and who would be glad of an opportunity of making a full disclosure and a suitable pecuniary settlement but are deterred from doing so by the fear of criminal proceedings ; and whether he proposes to do anything to meet such cases

Sir W. JOYNSON-HICKS The question of fraud and evasion in connection with direct taxation is, of course, a matter of great importance to the Exchequer, but it is not desired that fraudulent taxpayers should be deterred by the fear of criminal proceedings from making spontaneous disclosure of their misdeeds and appropriate pecuniary restitution. I will circulate with the Official Report a statement of the practice which is followed by the Board of Inland Revenue in the matter

The following is the statement referred to

“ Where the taxpayer takes the initiative and voluntarily discloses the fact of his past frauds and their full extent and is also prepared to facilitate investigation and to furnish full evidence (including not only the business books and records, but also private bank books), as may be required on behalf of the Board as to the amount of the correct liability, the Board will not institute criminal proceedings, but will accept a pecuniary settlement.

“ Cases not infrequently arise in which the disclosure, though in a sense voluntary, is not made on the initiative of the taxpayer

“ For example, the taxpayer may have been requested to furnish accounts, or further particulars in connection with accounts already rendered, or the production of books may

have been suggested. If, in such a case, the taxpayer forthwith comes forward with a full and frank disclosure of past frauds, this would be accepted by the Board as equivalent to a voluntary disclosure to the extent that the Board would not institute criminal proceedings, but would accept a pecuniary settlement. The condition indicated above as to a full investigation and the production of evidence would apply, of course, equally to these cases.

"The pecuniary settlement which the Board will be prepared to accept will be determined by reference to the circumstances of the individual case, and will in no case exceed the full amount of the unassessed duties for the whole period (whether additional assessments are or are not competent), plus the pecuniary penalties for which proceedings might be taken. Due regard will be had to the taxpayer's means, not only in determining the amount of the sum to be accepted in settlement, but also in fixing the date or dates for payment.

"Normally, the Board will feel justified in accepting in cases where the disclosure is purely voluntary, *i.e.*, made on the initiative of the taxpayer, a smaller sum by way of penalty than would be required if the disclosure had not been spontaneous but had followed upon an inquiry by the Inspector.

"In some cases of voluntary or quasi-voluntary disclosure it has been found that the taxpayer has in past years furnished false and fraudulent particulars in reply to inquiries which have been made by the Inspector and have been treated as closed. In such cases the Board do not refuse to accept a pecuniary settlement in the event of a voluntary disclosure or quasi-voluntary disclosure following upon fresh inquiry. The previous fraudulent replies would, however, be regarded as a relevant circumstance in determining the amount to be paid by way of penalty."

APPENDIX I.

RATES OF INCOME TAX, SUPER-TAX AND SUR-TAX
FROM 1907-8 ONWARDS.

			s	d
1907-8	Earned Income, where Total Statutory Income			
	not more than	£2,000	..	9
1908-9	All other Income . . . . .		..	1 0
1909-10	Earned Income, where Total Statutory Income			
	not more than	£2,000	..	9
1910-11	" " " " " "	£3,000	..	1 0
1911-12	All other Income . . . . .		..	1 2
1912-13				
1913-14	Super-Tax, where Total Statutory Income exceeds on every £ over £3,000	£5,000	..	

ABATEMENTS ON ABOVE PERIODS

Not exceeding £400 =	£160
" 500 =	£150
" 600 =	£120
" 700 =	£70

From 1909-10 onwards £10 for each Child under
the age of 16, where Total Income not
exceeding £500

1914-15	Earned Income, where Total Statutory Income			
	not more than	£1,000	..	1 0
	" " " " " "	£1,500	..	1 2
	" " " " " "	£2,000	..	1 4
	" " " " " "	£2,500	..	1 6½
	Unearned Income	£300	..	1 4
	" " " " " "	£500	..	1 6½
	All other Income . . . . .		..	1 8
	Super-Tax, where Total Statutory Income exceeds	£3,000		
	First £2,500 .. .. .		..	Nil.
	Next £500 .. .. .		..	6½
	" £1,000 .. .. .		..	9½
	" £1,000 .. .. .		..	1 0
	" £1,000 .. .. .		..	1 2½
	" £1,000 .. .. .		..	1 5½
	" £1,000 .. .. .		..	1 8
	The remainder .. .. .		..	1 9½

Abatements as above. £20 for each Child under
the age of 16, where Total Income not
exceeding £500

FISCAL YEAR, 1915-16.

Where Total Income exceeds	And does not exceed	Rate of Income Tax on Earned Income	Rate of Income Tax on Unearned Income	Abate- ment	Additional Abatement	Super-Tax
£	£	s d	s d.	£		
—	130	Nil	Nil	—	—	—
130	300	1 9	2 4	120	£25 each child under 16, at commence- ment of year of assessment	Nil
300	400	1 9	2 9	120	"	"
400	500	1 9	2 9	100	"	"
500	600	1 9	3 0	100	Nil	"
600	700	1 9	3 0	70	"	"
700	1,000	1 9	3 0	Nil	"	"
1,000	1,500	2 1	3 0	"	"	"
1,500	2,000	2 4	3 0	"	"	"
2,000	2,500	2 9	3 0	"	"	"
2,500	3,000	3 0	3 0	"	"	"
3,000	---	3 0	3 0	"	"	"
						On 1st £2,500 ..
						Next £500 .. s. d.
						.. £1,000 .. 1 10
						.. £1,000 .. 1 6
						.. £1,000 .. 1 10
						.. £1,000 .. 2 1
						.. £1,000 .. 2 6
						.. £1,000 .. 2 10
						.. £1,000 .. 3 2
						£10 000
						On the balance 3 6

FISCAL YEARS, 1916-17 AND 1917-18

£	£	Nil	Nil	£		
—	130	Nil	Nil	—	—	—
130	300	2 3	3 0	120	£25 each child under 16, at commence- ment of year of assessment	Nil
300	400	2 3	3 0	120	"	"
400	500	2 3	3 0	100	"	"
500	600	2 6	3 6	100	"	"
600	700	2 6	3 6	70	"	"
700	1,000	2 6	3 6	Nil	Nil	"
1,000	1,500	3 0	4 0	"	"	"
1,500	2,000	3 8	4 6	"	"	"
2,000	2,500	4 4	5 0	"	"	"
2,500	3,000	5 0	5 0	"	"	"
3,000	---	5 0	5 0	"	"	"
						On 1st £2,500 ..
						Next £500 .. s. d.
						.. £1,000 .. 1 2
						.. £1,000 .. 1 6
						.. £1,000 .. 1 10
						.. £1,000 .. 2 2
						.. £1,000 .. 2 6
						.. £1,000 .. 2 10
						.. £1,000 .. 3 2
						£10,000

FISCAL YEARS, 1918-19 AND 1919-20.

Where Total Income exceeds	And does not exceed	Rate of Income Tax on Earned Income	Rate of Income Tax on Unearned Income	Abate- ment	Additional Abatement	Super-Tax
£	£	Nil	Nil	£		
—	130	2 3	3 0	120	—	Nil
130	300				£25 for each child under 16, at commencement of year of assessment and a similar amount for wife or dependent relative	
300	400	2 3	3 0	120	"	"
400	500	2 3	3 0	100	"	"
500	600	3 0	3 9	100	"	"
600	700	3 0	3 9	70	"	"
700	800	3 0	3 9	Nil	"	"
800	1,000	3 0	3 9	"	£25 for each child (excluding the first 2)	"
1,000	1,500	3 9	4 6	"	Nil	"
1,500	2,000	4 6	5 3	"	"	"
2,000	2,500	5 3	6 0	"	"	"
2,500		6 0	6 0	"	"	"
						On 1st £2,000 .. Nil
						Next £500 .. 8 d
						" £500 .. 1 6 "
						" £1,000 .. 2 0 "
						" £1,000 .. 2 6 "
						" £1,000 .. 3 0 "
						" £2,000 .. 3 6 "
						" £2,000 .. 4 0 "
						<u>£10 000</u>
						On the balance 4 6

^a For 1919-20, if subsequent child, be made for child

allowance for wife was £50, and for children £40 for first child and £25 for each where the income exceeded £900 but did not exceed £1,000, claim could only in excess of the first two

FISCAL YEARS, 1920-21 TO 1924-25

1920-21 AND 1921-22.

Graduated scale of rates of Income Tax on both Earned and Unearned Incomes abolished, together with graduated scale of abatements.

Standard rate of Income Tax . . . 6/- in the £

First £225 of Taxable Income . . . 3/- " " "

Deductions allowed as under—

10% on Earned Income (maximum £200).

9/10ths of Wife's Earned Income (maximum £45)

Personal Allowance £135 (increased to £225 in the case of married men).

£36 for first Child, and £27 for each subsequent child.

£45 to a Widower or Widow maintaining a Female Relative or other female to take charge of his children (From 1924-25 this is increased to £60, and applies to a Housekeeper also.)

£25 to an aged or infirm Taxpayer, maintaining a Daughter to reside with him

£25 to a Taxpayer maintaining a relative or widowed Mother whose Income does not exceed £50 per annum

£45 to a Taxpayer maintaining a Female Relative to take charge of a Brother or Sister (From 1924-25 this is increased to £60)

From Income Tax payable, tax on premiums paid on Life Assurance policies on the life of Taxpayer or his Wife according to the rules (q v)

Super-Tax Charged as from 6th April, 1920 on incomes exceeding £2,000

On first	£2,000	Nil.
„ next	500	1/6 in the £
„ „	500	2/- „ „ „
„ „	1,000	2/6 „ „ „
„ „	1,000	3/- „ „ „
„ „	1,000	3/6 „ „ „
„ „	1,000	4/- „ „ „
„ „	1,000	4/6 „ „ „
„ „	12,000	5/- „ „ „
„ „	10,000	5/6 „ „ „
„ remainder (i.e. after £30,000)		6/- „ „ „

1922-23

Standard Rate of Income Tax .. 5/- in the £

1923-24 and 1924-25

Standard Rate of Income Tax 4/6 in the £

FISCAL YEARS 1925-26 TO 1927-28.

Income Tax

Standard Rate .. 4/- in the £

First £225 of Taxable Income 2/- „ „ „

Deductions allowed as under—

One sixth of Earned Income (maximum £250)

Personal Allowance £135 (increased to £225 in case of married men).

Nine tenths of Wife's Earned Income (increased for 1927-28 to 2/3 this) maximum £45

£36 for first child and £27 for each subsequent child.

£60 to a Widower or Widow maintaining a Female Relative or other female

£60 to a Taxpayer maintaining a Female Relative to take charge of a brother or sister

£25 to an aged or infirm Taxpayer, maintaining a Daughter to reside with him.

£25 to a Taxpayer maintaining a relative or widowed Mother whose income does not exceed £50 per annum

From Income Tax payable, tax on premiums paid on Life Assurance policies.

Super-Tax	On first £2,000	Nil.
	„ next 500	9d. in the £
	„ „ 500	1/- „ „ „
	„ „ 1,000	1/6 „ „ „
	„ „ 1,000	2/3 „ „ „
	„ „ 1,000	3/- „ „ „
	„ „ 2,000	3/6 „ „ „
	„ „ 2,000	4/0 „ „ „
	„ „ 5,000	4/6 „ „ „
	„ „ 5,000	5/- „ „ „
	„ „ 10,000	5/6 „ „ „
	„ remainder	6/- „ „ „

FISCAL YEARS 1928-29 TO 1929-30.

As for 1927-28, save that the allowance for children was—

£60 for first child, and £50 for each subsequent child. The allowance applies to a child living at any time within the year of assessment.

Sur-tax—see Chapter VIII

FISCAL YEAR 1930-31.

Income Tax

Standard Rate 4 6 in the £

First £250 of Taxable Income 2 - „ „

Allowances as for 1929-30, with minor restriction on life assurance relief

Sur-tax—see Chapter VIII

FISCAL YEARS 1931-32 TO 1933-1934

Income Tax—

Standard Rate 5 - in the £

First £175 of Taxable Income 2 6 „ „

Allowances—

One-fifth of earned income (maximum £300)

Personal allowance £100 (married man £150)

plus of wife's earned income (max £45).

£50 for first child and £40 for each other eligible child.

£50 for housekeeper where relevant

£25 for dependant relative.

Life assurance premiums as for 1929-30

Sur-tax—See Chapter VIII

APPENDIX II.

Income Tax—Depreciation Allowances.

SCHEDULE OF AGREED NORMAL RATES OF DEPRECIATION.

[The rates below are on the written down value in every case except SHIPPING.]

Industry, etc.	%	Nature of Plant.
Bakery	6	Plant and machinery generally. (No allowance for wear and tear to be made in respect of the non-metal parts of the structure of ovens, but in lieu thereof, the cost of repairs and replacement and rebuilding to be charged to revenue, but cost of new ovens, extensions and enlargements of existing ovens to be charge capital.)
Blacking and Finishing	7½	Plant and machinery generally
Bookbinding	5	Engines, boilers and shafting
	7½	General binding machinery
Brassfounders' Association	5	Engines, boilers and shafting
	7½	Electric motors, dynamos and other electrical plant
	7	Other plant and machinery
Brickmaking	5	Steam engines, boilers, and shafting, mixing and brick making machines
		Electrical plant (dynamos, motors, transformers, etc.), crushing and grinding plant
		No depreciation is allowed on kilns, but an allowance is made in respect of the cost of repairs, renewal and rebuilding, the cost of new kilns and of extensions to existing kilns is treated as capital in the ordinary course
Chemical	15	Sulphuric acid plant
	7½	Chemical plant other than above, electrical plant
	5	Other plant
Collieries	6½	Railway wagons
	6½	Surface plant and machinery, other than electrical plant
	7½	Electrical plant at surface and underground plant installed in pillars
	10	Other underground plant
	15	Steam lorries
	20	Lorries driven by internal combustion engines
		RATES.—Additions to and replacements of plant to be charged to capital, provided that all repairs and renewals and replacement of parts which do not destroy identity of machine to be all as a revenue charge. The arrangement to have effect for the year 1928-29 and subsequent years, and to apply to all members of the Mining Association of Great Britain. In composite business to apply only to plant and machinery within the description mentioned. The taxpayer must furnish to the District Inspector each year an analysis of the maintenance of plant and machinery account, together with the balance sheet and profit and loss account. On any change over from a "renewals" basis to the "wear and tear" basis, the starting figure for wear and tear is to be original cost written down as if wear and tear allowances had been made from the outset at the agreed rates.
Cold Stores and Ice Manufacture		Steam and gas engines, boilers and shafting
		Electric plant and insulation.
		Refrigerating machinery, loose plant, utensils, etc., to be dealt with by special rates.
	10	Refrigerating machinery, i.e., compressors, condensers, ice machines, coolers, conduits, moulds, coils, travellers, etc.
Colour, Paint and Varnish Manufacturing	5	Engines, boilers shafting, and storage tanks
	7½	General plant and machinery, including grinding machinery
		electric motors
	20	Motor lorries and motor tractors
		Horses, loose tools and utensils, including typewriters (Renewals allowed instead of depreciation)
Commercial Motor Vehicles	15	Commercial motor vehicles propelled by steam power (Excluded lorries)
	20	Commercial motor vehicles propelled by power derived from internal combustion engines (Motor lorries and motor vans.)
Corset Manufacturing	5	Steam engines, boilers and shafting
	7½	Laundry and cutting machinery and electric motors.
	10	Other machinery
	20	Motor vans.

Industry, etc.	Nature of Plant
Cotton Spinners and Manufacturers. Expenditure on adaptation of plant and machinery	<p>New shuttles and shuttle stands and new ring bobbins to be dealt with as if outlay represented expenditure on further supplies of ordinary type. Surplus stocks of old type to be allowed to lapse from stock figure.</p> <p>Sley repairs and renewals. Whole outlay to be regarded as revenue expenditure.</p> <p>Re-winding machinery. Normal rates of wear and tear to be applied.</p> <p>New pulleys, spate cloth rollers and brackets, warp and weft stop motions, shuttle boxes extended, lifting two box motions, pick and pick motions, conversion of ordinary looms to circular box looms, pick counters, alterations to ring spinning frames and mule frames, high speed drafting and automatic weft feeding attachments. Outlay to be regarded as capital expenditure, but 12½ per cent on written down value to be allowed for first five years following outlay. Balance remaining to be treated as process plant on which ordinary rate (normally, 7½ per cent) to be allowed unless some further arrangement is made.</p>
Creameries, Dairies and Ice Cream Factories	<p>10 Steam boilers, steam and gas engines and storage tanks.</p> <p>15 Refrigerating plant (except iceless cabinets) and bottling and washing machines.</p> <p>Iceless cabinets.</p> <p>Other plant and machinery, including electric motors.</p> <p>(The arrangement to have effect for 1930-1931 and subsequent years and to apply to all members of the constituent associations of the National Federation of Dairymen's Associations and to all members of the Ice Cream Association of Great Britain and Ireland. Loose plant, box cycles, utensils (churns, bottles, etc.), and piping to be dealt with on a renewals basis. The rate of 15 per cent for iceless cabinets is subject to review at such time as experience indicates that revision is appropriate.)</p>
Cutlery and Cutlery Blanks Manufacture	<p>Electric motors, grinding machines, drop hammers, power hammers, golf hammers, power stamps and buffing and glazing machines.</p> <p>All other plant and machinery.</p> <p>No allowance to be made in respect of grinding, emery, glazing and other wheels or in respect of utensils, belting, electric cables or turnings, but in lieu thereof the cost of repairs and replacements to be allowed as a charge against revenue as and when incurred, provided that the cost of additions to or enlargements of such wheels, utensils, belting, etc., is to be treated as a capital charge. All additions to and replacements of plant and machinery to be charged to capital provided that all repairs and all renewals and replacements of parts which do not destroy the identity of a machine are to be allowed as a revenue charge. Each of the constituent parts of a cutter's frame (<i>e.g.</i> beams, brackets, shunting and pulleys) is to be treated as a separate machine.</p>
Drop Forgers and Stampers	<p>Plant and machinery generally (excluding fixtures which are dealt with on renewals basis).</p>
Dyeing and Finishing Dyeing and Cleaning, See Steam Laundries	7½ Plant and machinery generally.
Electric Furnaces and plant and machinery used in connection	<p>All parts of furnace (including transformers, switch gear, high and low cable connections, furnaces, tilting gear and regulators) but not foundations, buildings, cranes, buckets, or any shop tools or equipment. (Rate on written down value after deducting all allowances.)</p>
Electric Light Undertakings	Cables.
Embroidery Manufacturing	<p>Plant and machinery.</p> <p>Fixed plant (engines, boilers, shuffling and gearing, and motors).</p> <p>General plant and machinery.</p> <p>Stitching machines.</p>
Engineer's Precision Tools, Manufacture of (such as twist drills, milling cutters, reamers, tap dies and screwing tackle)	<p>Steam and gas engines, boilers, shuffling and pulleys.</p> <p>Electrical machinery including dynamos and motors.</p> <p>Other plant and machinery.</p>
Envelope Making	Steam power, plant and shuffling.
Farming	<p>Electrical power plant, including dynamos and electric motors and on all process plant.</p> <p>Motor lorries and motor vans.</p> <p>Steam boilers and engines, portable steam engines, threshing machines and fixed plant.</p> <p>Electric installation.</p> <p>Minor loose plant and utensils (Renewals allowed instead of depreciation).</p> <p>Petrol or oil driven tractor-cultivators.</p> <p>15 Commercial motor vehicles propelled by steam power (Steam lorries).</p> <p>20 Commercial motor vehicles propelled by power derived from internal combustion engines (Motor lorries and motor vans).</p> <p>Motor cycles, motor cars, etc., restricted to proportionate part applicable to use of car for business purposes.</p>

Industry, etc	%	Nature of Plant
Farming	10	All other types of farm machinery and implements, including port poultry and similar portable sheds and incubators
Fibres and Rasps Manufacture	7½	Electric motors, grinding machinery, drop hammers, goni hammer and power stamps
	6½	File cutting and rasp punching machines
		No allowance to be made in respect of grinding, emery, glass and other wheels or in respect of utensils, belting, electric cables or turnaces, but in lieu thereof the cost of repairs and replacements to be allowed as a charge against revenue as and when incurred, provided that the cost of additions to or enlargement of such wheels, utensils, belting, etc. is to be treated as a revenue charge. All additions to and replacements of plant and machinery to be charged to capital provided that all repairs and all renewals and replacements of parts which do not destroy the identity of a machine are to be allowed as a revenue charge. Each of constituent parts of a machine's frame (e.g., beams, brack shafting and pulleys) is to be treated as a separate machine
Fishing Tackle	5	Other plant and machinery
	5	Engines, boilers and shafting
	6	Fishing hook and rod making machinery
	7½	Electric motors
Flax Spinning and Weaving (Ireland)	7½	Plant and machinery (except accessory plant, such as pins, cages, spools, belting, driving ropes, damask cards, dress patterns, models, furniture and fixtures)
Flax Manufacturing	6	Plant and machinery generally
Flour Milling	7½	Steam power and shafting
	7½	Electric motors and other electric plant, gas and oil engines (other than Diesel type engines), roller mills, automatic weighers, spout elevators and conveyors, with lagging.
Furniture Manufacturers	10	Other plant and machinery, including Diesel type engines
	5	Engines, boilers and shafting
	7½	General plant and machinery and electric motors
	15	Vehicles propelled by steam power (Steam wagons and lorries)
	20	Vehicles propelled by power derived from internal combustion engines (Motor wagons and lorries)
Gas Undertakings (not owned by or for public)	5	Gas holders
	10	Meters, cookers, and gas fires
Handkerchief and Embroidery Manufacturing		Fixed plant (engines, boilers, shafting, gearing and motors)
Handstitching		Stitching machines
		Fixed plant (engines, boilers, shafting, gearing and motors)
Hosiery Manufacturing		Handstitching machinery
		Engines, boilers and shafting
Hosiery Needle Making		Process plant
		Steam and gas engines, boilers, etc.
		Electric motors
		Manufacturing machinery
		Plant and machinery
Lace and Embroidery and Muslim Manufacturing		Engines, boilers and shafting
Ladies' and Children's Clothing		Electric motors
		General process plant
Laundries, Steam, See Steam Laundries		
Linen and Floorcloth Manufacturing	5	Engines, boilers and shafting
	7½	Other plant and machinery
	10	Diesel engines
Machine Tools Manufacturers (exclusive of grinding or similar machinery)	5	Steam engines, boilers and shafting
	7½	Other plant and machinery (including electrical)
		Additions to and replacements to be charged to capital provided that repairs, renewals and replacements which do not destroy the identity of the machine shall be allowed as a revenue charge
		No allowance for wear and tear to be made in respect of machinery, but in lieu thereof cost of repairs, replacements and rebuilding to be charged to revenue, provided that additional turn and extensions and enlargements of existing turnaces be charged to capital
Madras Manufacturing	7½	General plant and machinery
Mantles and Ladies' Clothing Manufacturers	5	Engines, boilers and shafting
	7½	Electric motors
	10	General machinery (process plant)
Match Manufacturing	5	Steam engines, boilers and shafting, and on lathes, woodcutting wax-taper-making machinery, including taper drums
	7½	General plant and machinery, including electric dynamos and motor match-making, splint-levelling and cleaning, and box-fitting machines
	20	Motor lorries and motor vans
Motor Omnibuses	20	Motor omnibuses (Rate does not apply to commercial motor vehicles)

Industry, etc		Nature of Plant
Motor Pantechmicons and Lorries		Motor pantechmicons and lorries (Does not extend to horse-drawn pantechmicons, lorries or to "lift" pantechmicons, which are not a fixed portion of a motor)
Municipal Electricity Undertakings (Domestic Appliances on Hire)	20 15 10	Cookers and kettles Refrigerators, washing machines, washing boilers and water heaters. Other apparatus
Muslin Manufacturing		Plant and machinery
Nail Making		All plant and machinery
Needles and Fishing Tackle Manufacturing		Engines, boilers and shafting Crochet, fishing hook and rod-making machinery Electric motors and needle-making machinery
Newspaper Printing		Engines, boilers and shafting Printing and binding machines
Pantechmicon Motor	10 20	Type (if not dealt with by way of renewals) Motor pantechmicons and lorries (Does not extend to horse-drawn pantechmicons, lorries or to "lift" pantechmicons which are not a fixed portion of a motor)
Paper Bag Making		Engines, boilers and shafting Electric motors and general plant Motor vans
Paper Box Making		Plant and machinery Motor vans
Paper Mills	20 5 7½	Machinery working day only Machinery working day and night
Pig Iron & Steel Manufacturers	7½	Plant and machinery generally (excluding furnaces, but including plant and machinery ancillary to furnaces)
Printing	5 7½	Engines, boilers and shafting Printing and binding machines
Railway Wagons	10 6½	Type (if not dealt with by way of renewals) Railway wagons owned by traders (In the case of wagons owned by railway companies the method adopted is to allow the actual cost of renewals year by year)
Saw Mills, <i>See</i> Timber		Plant and machinery (No allowance for wear and tear to be made in respect of the non-metal parts of the structure of ovens, but in lieu thereof, the cost of repairs and replacements, and rebuilding to be charged to revenue, but cost of new ovens and extensions and enlargements of existing ovens to be charged to capital)
Scottish Association of Master Bakers	6	
Shipping - <i>see below</i>		
Shoe and Slipper Making		Engines, boilers and shafting Process plant Motor vans and lorries
Silk Manufacturing		Steam engines, boilers and shafting
	7½	General plant (including winding, throwing, doubling and weaving machinery), electric motors
Steam Laundry and Dyeing and Cleaning	10	Sewing, braiding and knitting machines Plant and machinery generally
Synthetic Dyestuffs Manufacturers	20 4	Motor vans Locomotives
		Railway wagons (ordinary), boilers, steam engines, shafting, coal handling plant and feed pumps Ralls of railway sidings Electric motors, dynamos, ice-making plant (excluding steam power plant) and open-railway wagons used for deleterious substances Other plant and machinery Additions and replacements to be charged to capital, provided that repairs, renewals and replacements which do not destroy the identity of the machine shall be allowed as a revenue charge. Each of the constituent parts (<i>e.g.</i> , vats, auto-claves etc.) of a "battery" constituting a single unit and each rail of railway sidings shall be taken to be a separate machine No allowance to be made for nitric acid plant, or plant consisting of glass, silica, earthenware or other similar material as distinct from metal pipe or electric cables, railway sidings except rails (cost of repairs and renewals to be charged against revenue)
Tailoring Trade, Ready-made and Wholesale Bespoke Men's Heavy Clothing		Plant and machinery <i>see</i> rails
Taxi-cabs (Double shift)		
Timber Goods, Manufacturers of, Timber Merchants, Saw Mills	7½ 20	Engines, boilers and main shafting General saw mill and machinery Traction engines, tractors, motor cars and haulage plant
Trackless Trolley Omnibuses	15	
Tramways		Permanent way—an allowance per mile of track based upon the estimated life of the permanent way Cables Cars and other rolling stock General plant and machinery, including standards, brackets and workshop tools Plant and machinery generally
Wrought Iron Industry		

SHIPPING (*Ships of all kinds other than Tankers*)**NEW SHIPS**

(1) As regards sailing vessels, steamers, and motor vessels, other than steamers and motor vessels delivered in one of the years 1917 to 1922, the normal basis on which the annual allowance for wear and tear may be computed is, subject to the concurrence of the Commissioners concerned, as follows -

	On the prime cost (i.e., the original cost price) of the ship,
Sailing vessels at 3 per cent	with an addition of 2½ per cent
Steamers and motor vessels at 4 per cent	on that part of the prime cost which relates to refrigerating plant and insulation

In the case of a steamer or motor vessel delivered in one of the years 1917 to 1922, the annual allowance will be computed upon the basis of one twenty-fourth of the difference between the prime cost and the break-up value (see paragraph III). This allowance is to be increased by 2½ per cent. on the prime cost of any refrigerating plant and insulation.

(II) In no case can a shipowner be regarded as entitled to a larger aggregate allowance of wear and tear than the actual cost to him of the ship *less* its break-up value.

(III) The break-up value of a ship will normally be computed on the basis of the amount of one year's allowance of wear and tear (i.e., 3 per cent on the prime cost in the case of sailing vessels, and 4 per cent in the case of steamers and motor vessels, including refrigerating plant and insulation). As regards steamers and motor vessels which were delivered in one of the years 1917 to 1922, however, the break-up values should be computed at the following rates on the prime cost - -

Year delivered	Rate per cent
1917	3
1918	2
1919	1½
1920	1½
1921	2½
1922	3

The break-up value computed as above is to remain constant throughout the whole life of the ship even where the ship is subsequently sold and the wear and tear allowances to the new owner are computed by reference to the cost of the ship to him (see "Second-hand Ships").

(IV) The amount of the break-up value of a ship is not to be regarded as increased by any sums which may have been regarded as capital expenditure on the renewal of engines and boilers or in respect of structural improvements such as the lengthening and strengthening of the ship. The net amount of any such expenditure is to be added to the original cost of the ship for the purpose of computing the aggregate amount of wear and tear to be allowed to the shipowner (see paragraph (II)). Where such expenditure is incurred before the expiration of 20 years of the life of a ship the normal annual allowance for wear and tear is to be increased by such an annual sum as will over the remainder of the period for which the normal allowance will require

to be made, exhaust such expenditure, where wear and tear allowances have been made for years before 1926-27 in respect of such expenditure, these allowances are not to be disturbed but the increase of the normal annual allowance for the year 1926-27 and onwards is to be such an annual sum as will over the remainder of the normal period exhaust the unallowed balance of the expenditure. Where such expenditure is incurred after the 20th year of the life of a ship the normal annual allowance is to be increased by such an annual sum as will exhaust such expenditure over the period given in the fourth column of the table on p. 493, taking the age of the ship when the expenditure was incurred in place of the "age at date of purchase" (first and second columns) *except* that where wear and tear allowances have been made for the years before 1926-27 in respect of such expenditure, the amount of the additional annual allowance for the year 1926-27 and subsequent years is to be such an annual amount as will exhaust the unallowed balance of the expenditure over the period given in the fourth column of the table, taking the *age of the ship in 1925* in place of the "age at date of purchase."

(V) Where a ship is purchased, sold, or lost during the year of assessment, the allowance to be made to the purchaser, vendor, or owner respectively for wear and tear for that year is the proportional part of the full annual allowance.

REFRIGERATING PLANT AND INSULATION STEAMERS AND MOTOR VESSELS

(1) The allowance is normally to be computed separately from the allowance for the mill, etc., in order to ensure (a) that the allowance in respect of refrigerating plant and insulation ceases when the break-up value of such plant, etc., is reached, and (b) that the aggregate allowance made to a shipowner in respect of refrigerating plant and insulation does not exceed the cost to him *less* the break-up value of such plant, etc. (2) The break-up value is to be computed at the rates for new ships set out above, *i.e.*, normally at 4 per cent. If the equipping of a ship with refrigerating plant and insulation was completed so that the ship was delivered to the shipowner during any of the years 1917 to 1922, the break-up value of such plant, etc., is to be computed by reference to the special rates for new ships delivered during that period. Where, however, a ship delivered during any of the years 1917 to 1922 was equipped with refrigerating plant and insulation after 1922, the break-up value of such plant, etc., is to be computed at the normal rate, *i.e.*, 4 per cent. (3) Where refrigerating plant and insulation is added to a ship (whether new or second-hand) after the "constant" break-up value has been computed, that value is to be increased by the break-up value of the refrigerating plant and insulation. A similar revision of the "constant" break-up value is to be made on the occasion of each further addition of such plant, etc., but no revision of the "constant" break-up value is to be made on account of capital expenditure on the renewal or improvement of *existing* refrigerating plant, etc. (4) In the circumstances indicated in paragraph (III) the annual allowance in respect of wear and tear of refrigerating plant and insulation is to be separately computed on the same basis as for similar plant in new ships, *i.e.*, at the normal rate of $6\frac{1}{2}$ per cent. Where, however, paragraph (IV) (*supra*) gives a basis more favourable to the shipowner, that basis should be applied, subject to the modification that the total allowance to be spread over the remaining lifetime of the ship is to be the cost of the additions *less* the break-up value computed as in paragraph (2) above.

SECOND-HAND SHIPS

Subject to the concurrence of the Commissioners concerned, the allowance for wear and tear in the case of a ship purchased second-hand is to be calculated by reference to (i) the actual cost of the ship to the owner for the time being, and (ii) the reasonable expectation of life of the ship at the date of purchase from the previous owner having in regard the type of ship concerned.

Apart from this, paragraphs (I) to (V) apply in the case of ships purchased second-hand.

As regards steamships, the scale of allowances given below has received the assent of the Council of the Chamber of Shipping of the United Kingdom.

Steamships over 30 years to be dealt with according to the facts of each case.

As regards a ship other than a steamship, the expectation of life depends upon the type and other considerations, and may be greater or less than that given for steamships.

These allowances came into operation as from the year 1926-27 inclusive.

NEW SCALE OF ALLOWANCES IN RESPECT OF SECOND-HAND STEAMERS

Age at date of purchase		Expectation of life	Expectation of life after deduction one year	Proportion of cost less break-up value to be written off each year for Depreciation
Over	Under			
Years	Years	Years	Years	Proportion
0	1	25	24	1/24
1	2	24	23	1/23
2	3	23	22	1/22
3	4	22	21	1/21
4	5	21	20	1/20
5	6	20	19	1/19
6	7	19	18	1/18
7	8	18	17	1/17
8	9	17	16	1/16
9	10	16	15	1/15
10	11	15	14	1/14
11	12	14	13	1/13
12	13	13	12	1/12
13	14	12	11	1/11
14	15	11	10	1/10
15	16	11	10	1/10
16	17	11	10	1/10
17	18	11	10	1/10
18	19	10	9	1/9
19	20	10	9	1/9
20	21	10	9	1/9
21	22	9	8	1/8
22	23	9	8	1/8
23	24	8	7	1/7
24	25	7	6	1/6
25	26	7	6	1/6
26	27	6	5	1/5
27	28	6	5	1/5
28	29	5	4	1/4
29	30	5	4	1/4
30			4	

* (c) Copyright royalties paid to non-residents.

As regards cases falling within **Class I**, where a payment has been made after 5th April, 1931, and before 15th October, 1931, and Income Tax has been deducted by reference to the standard rate of 4s 6d in the £ originally imposed for the year, Paragraph 2 of the Third Schedule to the Finance (No 2) Act, 1931, provides that any deficiency in the amount of tax deducted (being a deficiency arising by reason of the change in the standard rate) shall, so far as possible, be made good by increasing the deduction to be made from the next payment, and, if necessary, from subsequent payments made before 15th October, 1932, by an amount equal to the amount of the deficiency. The additional amount so to be deducted must be accounted for to the Revenue in the same manner as the tax deducted from the original payment.

For example, in the case of equal half-yearly payments of dividends, interest, etc., on 1st July and 1st January, tax will have been deducted from the payment on 1st July, 1931, by reference to the original standard rate of 4s 6d in the £, tax will, therefore, be deductible from the payment on 1st January 1932, by reference, in effect, to a rate of 5s 6d * in the £ (5s, the standard rate for the year, + 6d to counter-balance the insufficient deduction in July).

In the case of equal quarterly payments on, say, 1st June, 1st September, 1st December, and 1st March, tax will have been deducted from the payments in June and September, 1931, by reference to the rate of 4s. 6d. in the £, tax will, therefore, be deductible from the December payment by reference, in effect, to a rate of 6s in the £ (5s, the standard rate for the year, + 1s to counter-balance the insufficient deductions in June and September).

Where there are no subsequent payments of dividends, interest, etc., before 15th October, 1932, from which the adjusting deduction can be made Bankers, Paying Agents and others, who have made payments since 5th April, 1931, from which tax has been deducted by reference to the rate of 4s. 6d in the £, will be required to furnish to the Commissioners of Inland Revenue lists containing the names and addresses of the persons to whom the payments have been made and the amounts of such payments.

Class II.--Tax deducted from payments made out of profits or gains brought into charge to Income Tax.

Under this head fall deductions from —

- (a) Ground rents, etc., secured on property charged with Income Tax
- (b) Interest, annuities, patent royalties, etc., wholly payable out of property, profits or gains charged with Income Tax
- (c) Interest payable by Municipal Corporations or other Local Authorities to creditors on rates, paid wholly out of profits or gains brought into charge to Income Tax
- (d) Fixed-rate preference dividends (as defined by Section 12 (4) of the Finance Act, 1930)† paid out of the profits or gains of Companies in the United Kingdom

*Where, however, the January payment is either greater or less in amount than the July payment (e.g., by reason of a variation in the rate of the dividend or the interest or of fluctuations in exchange) the effective rate by reference to which deduction of tax will be made will not of course, be 5s 6d in the £.

For example, if the July payment amounted to £5 and the payment in January to £10, the tax deductible from the latter payment would be equivalent to tax by reference to an effective rate of 5s 3d in the £ (i.e., £10 at 5s, the standard rate for the year, plus £5 at 6d to make up the July deficiency, which is equivalent to tax on £10 at 5s 3d in the £).

†The expression "fixed-rate preference dividend" is defined to mean (a) a dividend payable on a preferred share or stock at a fixed gross rate per cent., or (b) where a dividend is payable on a preferred share or stock partly at a fixed gross rate per cent. and partly at a variable rate, such part of that dividend as is payable at a fixed gross rate per cent.

The adjustment of deductions from payments falling within **Class II** is primarily a matter between the payer and the recipient and does not immediately concern the Revenue. The property, profits or gains, out of which the interest, dividends, etc., are paid, will be fully taxed in the ordinary course and the Revenue will receive in this manner the full tax to which it is entitled.

Provision is, however, made by the Income Tax Acts for the adjustment of insufficient deductions in cases falling within **Class II** as follows:—

Where a payment or payments due after 5th April, 1931,* have been made before 15th October, 1931, and Income Tax has been deducted by reference to the original standard rate of 4s. 6d. in the £, Section 211 (2) of the Income Tax Act, 1918 (as amended by Section 12 (2) of the Finance Act, 1930, and by Paragraph 3 of the Third Schedule to the Finance (No. 2) Act, 1931) authorises the payer of ground rents, interest, preference dividends, etc., to adjust the previous under-deductions of tax by making corresponding extra deductions from the next subsequent payments of ground rent, interest, etc. Thus, in the case of equal half-yearly payments of debenture interest due on 1st July and 1st January, tax will have been deducted from the payment on 1st July, 1931, by reference to the original standard rate of 4s. 6d. in the £, the company will, therefore, be entitled to deduct tax from the payment of interest on 1st January, 1932, by reference, in effect, to a rate of 5s. 6d. † in the £ (5s., the standard rate of the year + 6d. to counter-balance the insufficient deduction in July).

In the case of equal quarterly payments of interest due on, say 1st May, 1st August, 1st November and 1st February, tax will have been deducted from the payments in May and August, 1931, by reference to the original standard rate of 4s. 6d. in the £, the company will, therefore, be entitled to deduct tax from the November payment of interest by reference, in effect, to a rate of 6s. in the £ (5s., the standard rate for the year, + 1s. to counter-balance the insufficient deductions in May and August).

If there is no further payment of ground rent, interest, etc., the payer is entitled to recover the amount under-deducted directly from the recipient of the payment from which the insufficient deduction, by reference to the rate of 4s. 6d. in the £, was made.

Ordinary dividends paid out of the profits or gains of Companies in the United Kingdom.

As regards all dividends other than "fixed-rate preference dividends" the position is as follows:

The Income Tax Acts do not authorise any subsequent adjustment in respect of under-deduction of tax, but provide (Subsection (3) of Section 12 of the Finance Act, 1930) that

where on payment of a dividend (not being a preference dividend within the meaning of this section), Income Tax has, under Rule 20 of the General Rules, been deducted therefrom by reference to a standard rate of tax greater or less than the standard rate for the year in which the dividend became due, the net amount received shall, for all the purposes of the Income Tax Acts, be deemed to represent income of such an amount as would, after deduction of tax by reference to the standard rate last-mentioned, be equal to the net amount received, and for the said purposes there shall in respect of that income be deemed to have been paid by deduction tax of such an amount as is equal to the amount of tax on that income computed by reference to the standard rate last-mentioned."

*In the case of feu duties, bond interest, etc., payable in respect of lands and heritages in Scotland, deductions in respect of Income Tax made from any payments due for the period ending on 15th May are to be made at the rate in force at the commencement of that period.

†Cf. footnote on page 500.

Thus, in the case of an ordinary dividend of £50 payable on, say, 1st July, 1931, from which tax was deducted at the original standard rate of 4s. 6d. in the £, the net amount received will have been £38 15s. 0d., and the shareholder will be deemed, for the purposes of Income Tax (and Sur-tax), to have received income amounting to £51 13s. 4d., and to have suffered tax, by deduction, amounting to £12 18s. 4d. [£51 13s. 4d. less £12 18s. 4d. (tax at 5s. in the £) leaving £38 15s. 0d., the net amount actually received]. If this dividend was received by a shareholder entitled to claim complete relief from Income Tax, he would be able to obtain repayment of £12 18s. 4d. (the tax which he is deemed to have suffered upon income amounting to £51 13s. 4d.). Similarly, if the shareholder is liable to Sur-tax, the amount to be included in his statement of total income will be £51 13s. 4d.

If further information, such as the Board may be in a position to furnish, as desired in particular cases, application should be made to this Office

I am, Sir,

Your obedient Servant,

C. GORDON SPRY,

Secretary

VARIATIONS OF ASSESSMENTS

CONSEQUENT UPON THE PASSING OF FINANCE (No. 2) ACT, 1931

The amount payable by virtue of any assessment made before the passing of the Act is, by virtue of the Act and without more, to be treated as varied to such an extent as is necessary to give effect to the change in the standard rate (§ 6 and Third Schedule (No. 2), 1931)

Where relief from Income Tax for 1931-32 has been given to any individual and the amount thereof is incorrect by reason of the amendments in the Reliefs and Allowances, the assessment is to be treated as varied automatically to give effect to the amendments and any excess relief so given may, if necessary be assessed under Case VI, Schedule D (§ 8 (2))

If the amount of tax payable is increased by virtue of the amendments, the Commissioners of Inland Revenue must give notice of the facts to the person affected (§ 9)

On the conversion of Government Stocks, any person dealing in securities as part of his trading activities who exchanges securities to which he is beneficially entitled for other securities is to be treated for Income Tax purposes (except as regards Income Tax on interest) as if the exchange had not taken place, i.e., no taxable profit can arise on the exchange until the new securities are sold. But he may give written notice within twelve months after the end of the fiscal year in which the conversion takes place that he desires to be assessed on the conversion (§ 10).

This applies to the conversion of 5% War Loan, 1929-47 (§ 16).

APPENDIX V.

RATING AND VALUATION ACT, 1925.

24. (1)—For the purpose of the making or revision of valuation lists under this part of this Act, the following provisions shall have effect with respect to the valuation of any hereditament other than a hereditament, the value of which is ascertained by reference to the accounts, receipts or profits of the undertaking carried on therein —

- (a) All such plant or machinery in or on the hereditament as belongs to any of the classes specified in the Third Schedule to this Act shall be deemed to be a part of the hereditament.
- (b) Subject as aforesaid no account shall be taken of the value of any plant or machinery in or on the hereditament

THIRD SCHEDULE

CLASSES OF MACHINERY AND PLANT TO BE DEEMED TO BE A PART OF THE HEREDITAMENT.

(1)—Machinery and plant (together with the shafting pipes, cables, wires and other appliances and structures accessory thereto) which is used or intended to be used mainly or exclusively in connection with any of the following purposes .—

- (a) The generation, storage, primary transformation or main transmission of power in or on the hereditament, or
- (b) The heating, cooling, ventilating, lighting, draining or supplying of water to the land or buildings of which the hereditament consists, or the protecting of the hereditament from fire

Provided that in the case of machinery or plant which is in or on the hereditament for the purpose of manufacturing operations or trade processes, the fact that it is used in connection with those operations or processes for the purpose of heating, cooling ventilating, lighting, supplying water or protecting from fire shall not cause it to be treated as falling within the classes of machinery or plant specified in this Schedule.

(2)—Lifts and elevators mainly or usually used for passengers.

(3)—Railway and tramway lines and tracks.

(4)—Such part of any plant or any combination of plant and machinery, including gas holders, blast furnaces, coke ovens, tar distilling plant, cupolas, water towers with tanks, as is, or is in the nature of a building or structure.

APPENDIX VI.

BANKRUPTCY REGULATIONS

CLAIMS FOR TAXES

Regulations as to the treatment in bankruptcy of claims for taxes agreed between the Board of Trade and the Commissioners of Inland Revenue. These are to be substituted for the provisions of paragraph 20 of Tr. Circular No. 4, which is issued to every trustee in bankruptcy on his appointment.

1—Proofs may be made for the full amount of income tax and sur-tax assessed upon the debtor at the date of the receiving order for the year of assessment ending 5th April next after that date and such tax will rank for dividend.

2—Proofs may be made for income tax and sur-tax (including super-tax), assessed upon the debtor at the date of receiving order for a year or years prior to that in which the order is made and such tax will rank for dividend except so far as it is tax payable in priority under Section 33 (1) of the Bankruptcy Act, 1914.

3—Proofs may be made for land tax assessed upon the debtor at the date of the receiving order and such tax will rank for dividend except so far as it is tax payable in priority under Section 33 (1) of the Bankruptcy Act, 1914. Provided that where the receiving order was made prior to 1st January in the year of assessment, proofs will not be made, or, if made, will be withdrawn, if on the said 1st January the property in respect of which the land tax is assessed is occupied by a person other than the debtor or the trustee in bankruptcy.

4—(a) When the receiving order is made on or after 6th April in any year but before a resolution has been passed by the House of Commons in Committee of Ways and Means imposing income tax and sur-tax for the year commencing on such 6th April, and having statutory effect under the Provisional Collection of Taxes Act, 1913, no proof will be made for any income tax or sur-tax for that year.

(b) Proofs may be made for any tax imposed at the date of the receiving order, although the assessment of such tax may be made subsequently to the date of the order. The tax will rank for dividend except so far as it is tax payable in priority under Section 33 (1) of the Bankruptcy Act, 1914. In the case of sur-tax imposed at the date of the receiving order at a rate to be determined by Parliament thereafter, proof may be made on the basis that the existing rates of sur-tax are re-imposed. In the event of the liability being ultimately altered an amended proof will be lodged.

5.—(a) Where proof has been made for income tax assessed upon the debtor under Schedules B, D, or E, and it is claimed that the debtor had no income taxable under such schedules, or that the assessments are excessive, an affidavit by the debtor setting out the grounds of claim accompanied by a certificate by the trustee in the bankruptcy in the terms of the First Schedule to these Regulations may be submitted and upon receipt thereof the Inland Revenue Authorities will forgo so much of the claim as appears to them on an examination of the said affidavit and certificate to be excessive. The form to be used for the purpose of such claim may be obtained from the Inspector of Taxes upon application.

(b) In cases where an affidavit by the debtor cannot be obtained, a certificate by the trustee in bankruptcy may be submitted, but the reason for the failure to furnish an affidavit must be stated in the certificate.

(c) Claims to relief from tax on account of "Personal Allowance" or such other reliefs and allowances as under the Income Tax Acts are dependent upon a statement of total income should be made *by the debtor* in the ordinary manner upon forms of declaration which may be obtained for the purpose from the office of any Inspector of Taxes.

In cases where such claims and statements cannot be obtained from the debtor, the Inland Revenue may, in lieu thereof, accept a certificate from the trustee in bankruptcy setting forth the relevant facts and may allow such relief as they are satisfied could properly have been claimed by the debtor.

(d) Any waiver of claim under sub-paragraphs (a) and (b) of this Regulation shall not extend to tax which the debtor was entitled to deduct from any interest of money, annuities, royalties or other sums paid in respect of the user of a patent or copyright, or other annual payments.

6 - Where a Collector of Income Tax has levied a distress on the goods of a debtor before the making of a receiving order, the following conditions shall apply —

- (i) If the distress has been completed by the sale of the goods distrained prior to the making of the receiving order, the collector shall retain the proceeds of sale, so far as the same are necessary to satisfy the amount for which distress was levied.
- (ii) If the distress has not been so completed, the collector will withdraw upon receipt of an undertaking by the Official Receiver or Trustee in the terms of the Second Schedule to these Regulations to treat such sum as may be legally due to the collector under and by virtue of the distress as a charge on the proceeds of the goods distrained on.

Notes:—

- (a) If the distress has been levied within three months next before the date of the receiving order the goods or proceeds will be subject to the charge imposed by Section 33 (4) of the Bankruptcy Act, 1914.

If an available act of bankruptcy has been committed by the debtor prior to the levying of the distress, nothing will be due to the collector under and by virtue of the distress, and he will prove in the bankruptcy for the debt for taxes for which the distress was levied but make no claim in respect of the costs of the distress.

FIRST SCHEDULE.

CLAIM FOR RELIEF FROM ASSESSMENTS OF INCOME TAX UNDER
SCHEDULES B, D OR E.*The Bankruptcy Acts, 1914 and 1926*

Court No of Matter
 Re
 of

I, the above-named debtor, do hereby make
 oath and say as follows:—

That I am justly and truly entitled to be relieved from the payment
 of the sum of £ being the tax payable under the assessment
 upon me under Schedule for the year(s) from 6th April
 to 5th April on the following grounds:—

(Here specify the grounds of claim)

Sworn at
 this day of , 193

Before me

CERTIFICATE

I hereby certify that from an examination of the above-named debtor
 (against whom a receiving order was made on the day of
 19) and from such evidence, books, accounts, etc., as have been produced
 to me, it appears that if the debtor had availed himself of the statutory
 provisions for relief there would have been *no less liability to income tax
 and that, therefore, the debtor and his estate should be relieved accordingly.

(Signed)

Trustee.

Dated this day of , 193

* Strike out as appropriate

Note I.—Any waiver of claim in consequence of the above certificate will
 not extend to tax which the debtor was entitled to deduct from any interest
 of money, annuities, royalties or other sums paid in respect of the user of a
 patent or copyright, or other annual payments.

Note II — The evidence in support of the claim for relief should be attached
 to this certificate.

SECOND SCHEDULE

UNDERTAKING AS TO PAYMENT OF TAXES IN CASES OF DISTRESS

The Bankruptcy Acts, 1914 and 1926.

Re

In consideration of your forbearing to realise and withdrawing from
 possession under the distress which you have levied or caused to be levied
 upon such goods of the above-named debtor as are liable to a distress for
 taxes in arrear due from such debtor, I HEREBY UNDERTAKE (without
 prejudice to the rights of preferential creditors under Section 33 (4) of the
 Bankruptcy Act, 1914) to treat the amount of money for which such distress
 is available, including the costs which you have incurred in the above levy,
 as a first charge on the net proceeds of any realisation of such goods which
 may come into my hands, subject only to the rights of such preferential
 creditors as aforesaid.

Dated this day of , 19
 (Signed)

Official Receiver.

Address

To.

INCOME TAX RETURNS MADE BY BANKRUPTS.

A trustee in bankruptcy is not entitled to require the disclosure to him of particulars shown in any returns furnished by a bankrupt for income tax purposes. The Board of Inland Revenue, have, however, agreed, as a result of negotiations with the Board of Trade, that copies of returns rendered by a bankrupt may be supplied to a trustee provided he furnishes a specific authority in the terms of the draft attached, signed by the bankrupt. A trustee should avail himself of these facilities only in cases in which reasonable grounds exist for supposing that the returns made by the bankrupt contain information of practical importance

To H M Inspector of Taxes, 193
 District

I have to inform you that on
 a Receiving Order in Bankruptcy was made against me in the
 Court I hereby authorise and request you to supply to the trustee of my
 estate, Mr. of
 copies of the returns made by me of my income for income tax purposes for
 the undermentioned years .--

Year ending 5th April, 19

“ “ “ “ 19
 19

Signature

Address

APPENDIX VII.

NOTES ON IRISH FREE STATE TAXATION.

	1927-28 to 1931-32.	1932-33 and 1933-34
Standard Rate	3 6	5 -
Reduced Rate Relief—Half Rate on	£225	£100
Allowances —		
Earned Income	$\frac{1}{10}$ th (max £200).	$\frac{1}{6}$ th of 1st £450 $\frac{1}{10}$ th of balance (max. £200)
Personal — Single	£135	£125
Manned	225	225
Additional Personal	Wife's	
Earned Income	$\frac{1}{10}$ ths (max £45)	$\frac{1}{10}$ ths (max £45)
(a) Child—one	£36	£50
Others (each)	27	£50
(b) Housekeeper	45	45
Dependent Relative	25	25
Old Age	none	none
(a) Child must be living at beginning of tax year. Child's income must not exceed £40		
(b) Housekeeper must be for purpose of looking after child, and is given to widows and widowers only		

For 1930-31 onwards, the preceding year basis has replaced the average system. Cases IV and V of Schedule D are abolished, and the sources included in Case III, all income assessable thereunder being aggregated, except those items which are on the remittances basis, cattle and milk dealers' profits, and certain other items. Remittances basis is limited to persons not domiciled in the Free State and Free State citizens not ordinarily resident therein, and certain investments of assurance companies

SUR-TAX

	1931-32, 1932-33 and 1933-34	s	d
First £1,500			nil
Next £500 ..			6 in 4
1,000		1	0
1,000		1	9
1,000		2	6
1,000		3	3
2,000		4	0
2,000		4	9
10,000		5	6
remainder		6	3

SUPER-TAX 1927-28 AND 1928-29, SUR-TAX 1928-29 and 1930-31.

		s	d
First £2,000			nil
Next 500			9
1,000 ..		1	0
1,000		1	6
1,000		2	3
1,000		3	0
2,000		3	6
2,000		4	0
remainder		4	6

APPENDIX VIII.

NOTES ON CORPORATION DUTY.

Corporation Duty was imposed by § 11 (1), Customs and Inland Revenue Act, 1885, owing to the fact that certain property, by reason of its belonging to or being vested in bodies corporate or unincorporate, escapes liability to death duties, and it is expedient to impose a duty thereon by way of compensation to the revenue. The duty is levied in respect of all real and personal property which shall have belonged to or been vested in any body corporate or unincorporate during the yearly period ending on 5th April in any year, and is at the rate of £5 per cent upon the annual value, income, or profits of such property accrued to such body corporate or unincorporate in the same fiscal year, after deducting therefrom all necessary outgoings, including the receiver's remuneration, and costs, charges, and expenses properly incurred in the management of such property.

The following property is exempt —

- (1) Property vested in or under the control or management of the Commissioners of Works or any Department of Government
- (2) Property which, or the income or profits whereof, shall be legally appropriated and applied for the benefit of the public at large or of any county, shire, borough, or place, or the ratepayers or inhabitants thereof, or in any manner expressly prescribed by Act of Parliament
- (3) Property which, or the income or profits whereof, shall be legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable purpose, or for the promotion of education, literature, science, or the fine arts
- (4) Property of any friendly society or savings bank established according to Act of Parliament (This does not exempt workmen's clubs.)
- (5) Property belonging to or constituting the capital of a body corporate or unincorporate established for any trade or business, or being the property of a body whose capital stock is so divided and held as to be liable to be charged to legacy duty or succession duty (This exempts most limited companies)
- (6) Property acquired by or with funds voluntarily contributed to any body corporate or unincorporate within a period of thirty years immediately preceding (Members' subscriptions and other payments made in accordance with the rules of the body are not deemed to be "funds voluntarily subscribed")
- (7) Property acquired by any body corporate or unincorporate within a period of thirty years immediately preceding where legacy duty or succession duty shall have been paid upon the acquisition thereof (*ibid* § 11)

The term "body unincorporate" includes every unincorporated company, fellowship, society, association, and trustee, or number of trustees, to or in whom respectively any real or personal property shall belong in such manner, or be vested upon such permanent trusts, that the same shall not be liable to legacy duty or succession duty.

The term "accountable officer" means every chamberlain, treasurer, bursar, receiver, secretary, or other officer, trustee, or member of a body corporate or unincorporate by whom the annual income or profits of property, in respect whereof duty is chargeable under this Act shall be received, or in whose possession, or under whose control, the same shall be (*ibid*. § 12).

The duty is considered as a stamp duty, and is under the care and management of the Commissioners of Inland Revenue, who have the same powers and authorities for the collection, recovery, and management thereof as are vested in them for the collection, recovery and management of Succession Duty (§ 13).

The duty is a first charge on all the property in respect of which it is payable while such property remains in the possession or under the control of the body corporate or unincorporate chargeable with such duty, or of any party or parties acquiring the same, with notice of any such duty being in arrear, and every such body corporate or unincorporate and every accountable officer, is, to the full extent of the property, answerable for the payment of the duty charged on it (§ 14).

Every body corporate or unincorporate chargeable with the duty must on or before 1st October in every year, deliver, or cause to be delivered, to the Commissioners or their officers, a full and true account of all property in respect of which the duty is payable, and of the gross annual value, income, or profits thereof accrued to the same body in the year ended on the preceding fifth day of April, and of all deductions claimed in respect thereof, whether by relation to any of the before-mentioned exemptions from such duty or as necessary outgoings.

The account must be made in the form presented by the Commissioners and every accountable officer liable for payment of duty in respect of any property chargeable is answerable also for the delivery to the Commissioners of the return relating to such property (§ 15).

Every accountable officer is authorised to retain or raise out of any moneys of any body corporate or unincorporate which shall be held by him, or shall come to his hands, the full amount of all moneys which he shall pay or have paid on account of the duty, and all reasonable expenses incident to such payments (§ 16).

The Commissioners may assess the duty upon the footing of any account rendered to them, or if dissatisfied with such account may cause an account to be taken by any person or persons appointed by themselves for that purpose, and assess the duty on the footing of such account subject to appeal to a court in the same manner as in any case of Succession Duty.

If the duty so assessed exceeds the duty assessable according to the account rendered to the Commissioners, and with which they shall have been dissatisfied, and if there is no appeal against such assessment, then it is in the discretion of the Commissioners, having regard to the merits of each case, to charge the whole or any part of the expenses incident to the taking of the special account on any funds liable to duty as an addition to and part of such duty and to recover it accordingly, but if there is an appeal against the assessment, then the payment of the expenses is in the discretion of the court.

The duty is payable immediately after the assessment and notwithstanding any appeal therefrom, but in the event of the amount of the assessment being reduced by the order of the court, the difference in amount shall be repaid with such interest (if any) as the court may allow (§ 17).

Every body corporate or unincorporate, and every accountable officer required to deliver any account and wilfully neglecting so to do on or before 1st October in any year is liable to 10 per cent on the amount of duty payable in respect of the property required to be comprised in such account, and a like penalty for every month after the first month during which such neglect continues.

Every body corporate or unincorporate, and every accountable officer required to pay any duty, and wilfully neglecting to do so for a space of twenty-one days after it becomes payable, is liable to a penalty equal to ten per cent on the amount of the unpaid duty, and a like penalty for every month after the expiration of the said period of twenty-one days during which such neglect continues (§ 18).

The Commissioners have the same powers in relation to proceedings to enforce the delivery of accounts, and in relation to the verification of accounts, and the production and inspection of books and documents, as they have in relation to Succession Duty.

Every body corporate or unincorporate, dissatisfied with the assessment of the Commissioners, may appeal in the same manner to the same courts, and subject to the same provisions in, to, and subject to which any accountable party may appeal in relation to Succession Duty (§ 19).

In the case of any proceeding in any court for the administration of any property chargeable with duty the court must provide out of any such property in its possession or control for the payment of the duty to the Commissioners (§ 20).

Returns.

Forms are issued by the Secretary to the Board of Inland Revenue, Assessments Division, requiring the following information

- (1) Situation and description of real and leasehold property, the name of the occupier and the gross annual value for Income Tax purposes, if occupied by the owner, or the gross rental, if let.
- (2) Particulars of fines, royalties, etc
- (3) Description of stocks in public funds, showing the period for which held in the year and the rate of interest received, the names in which invested or deposited, the nominal amount held, and gross income therefrom.
- (4) Similar particulars in respect of the personal property, including securities for money and deposits in bank

Assessment.

The liability is based on the actual gross income of the year of assessment, ended 5th April, but the accounts ended in the year are accepted. A copy of the accounts should accompany the Return

Deductions are allowed for the following —

- (1) Ground rent (gross) and mortgage and debenture interest (gross)
- (2) Insurance for the structure of the property, excluding contents
- (3) Necessary repairs to property charged, excluding improvements and repairs to equipment
- (4) Expenses incidental to the management of the property and to the realisation of the income
- (5) The salary of the receiver, or a fair proportion thereof
- (6) Income legally appropriated to charitable purposes and funds from property exempted as already stated in (6) and (7) above

Computation.

The Computation is as follows —

Annual Value, Income or Profits of Real and Leasehold Property—

Property in occupation of owner	£
Property let	£

Total	£
Annual Income of Personal (other than Leasehold) Property	£
Total Property	£
Total Amount of Deductions Claimed	£

Net Annual Value, Income or Profits	£

The duty of 5% is computed on the Net total.

Illustration—

A professional body was incorporated under the Companies Act with permission to dispense with the word "limited" as part of its name. The Income and Expenditure Account for the year ended 31st March, 1933, was as follows—

<i>Dr.</i>			<i>Cr.</i>
To Salaries	£	By Subscriptions	£
„ General Expenses	1,500	„ Interest on Investments	2,900
„ Insurance—	3,000	less tax	2,400
Buildings owned	£12	„ Rents Received, less	1,100
„ let	78	tax	
Contents	20		
	110		
„ Ground Rent, less tax	15		
„ Mortgage Interest, less			
tax	900		
„ Schedule A tax	120		
„ Agents' Commission 5% on net rents			
„ Excess of Income over Expenditure	700		
	<hr/> £6,400		£6,400

The Net Annual Value of the property let is £1,200. The investments include £20,000 3½% War Stock, the result of the conversion of a similar amount of 5% War Loan given to the society by the Will of a deceased member ten years before. This stock is, by election, taxed at source. Compute the Corporation Duty payable for 1933-34 assuming that General Expenses include £115 repairs to the structure of buildings

Gross Annual Value of property in occupation of owner	£	
Gross Rents received from property let	580	
	1,400	
	<hr/> 1,980	
Annual Income of Personal Property—		
Gross Interest Received	£3,200	
Less Exempted by § 11 (7)	700	
	<hr/> 2,500	
		<hr/> 4,480
Deductions claimed—		
Ground Rent	20	
Mortgage Interest	1,200	
Repairs	115	
Insurance	90	
Agent's Commission	55	
	<hr/> 1,480	
Net Annual Value, etc ..		<hr/> £3,000

NOTES—(1) Since the Schedule A tax paid amounts to £120, i.e., tax at 5/- on £480, the gross annual value of the property owned is £100 + ? (£480 — £80) = £580

(2) Since the net annual value of the property let is £1,200, the tax thereon at 5/- is £300, the amount deducted from the rent. Hence the gross rent is £1,100 + 300 = £1,400.

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